F10P Gt. Britain S

UNITED STATES. No. 1 (1895).

CORRESPONDENCE

RESPECTING

CLAIMS FOR COMPENSATION ON ACCOUNT OF BRITISH VESSELS SEIZED IN BEHRING SEA

BY

UNITED STATES' CRUISERS.

Presented to both Houses of Parliament by Command of Her Majesty.
September 1895.

3 Papers by Command

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Correspondence respecting Claims for Compensation on account of British vessels seized in Behring Sea by United States' Cruisers.

No. 1.

Colonial Office to Foreign Office.—(Received May 9.)

Sir, *Downing Street, May 8, 1894.*

I AM directed by the Marquis of Ripon to transmit to you, to be laid before the Earl of Kimberley, copy of a despatch and inclosure from the Governor-General of Canada, respecting the claims of British subjects in respect of the illegal seizure of their sealing-vessels in Behring Sea by the authorities of the United States.

Now that the legislation for the enforcement of the Regulations prescribed by the Arbitrators has been completed, Lord Ripon hopes that the arrangements for settling these long-outstanding claims will be pressed forward as quickly as possible.

The question raised by the Dominion Government as to the proof which will be required is one which Lord Ripon is disposed to think must be settled by the Commission which it is proposed shall adjudicate on the claims, and his Lordship would suggest that in negotiating the Convention for the appointment of such a Commission, the British Ambassador should obtain a recognition of the principle that compensation when awarded should cover the expense of establishing the right to compensation, though it might be left to the Commission to say whether, in any particular case, the claimant should be allowed the costs incurred in proving his claim.

In the meantime, I am to suggest that Sir J. Pauncefote should be instructed by telegraph to press the United States' Government to begin the negotiation of the Convention for the appointment of a Commission to adjudicate on the claims, and that he should be desired, as soon as a date has been fixed for commencing the discussion, to telegraph for a Canadian Delegate to assist him in case Dr. Dawson is not empowered to discuss the question.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure 1 in No. 1.

The Earl of Aberdeen to the Marquess of Ripon.

My Lord, *Government House, Ottawa, March 15, 1894.*

WITH reference to previous correspondence on the subject of the presentation to the United States' Government of the claims for damages preferred by the owners of sealing-vessels seized in Behring Sea, I have the honour to forward herewith a copy of an approved Minute of the Privy Council, embodying a Report by the Minister of Marine and Fisheries, in which, referring to the action of the United States' Government in disputing the ownership of these vessels before the Behring Sea Tribunal, he discusses the question of the measures to be taken to establish such ownership to the satisfaction of that Government.

Your Lordship will observe that my Ministers would be glad to learn the opinion of Her Majesty's Government with regard to the methods to be adopted with this end; and, further, to know whether they would insist on the submission of such evidence of ownership and national character as would be necessary to meet the

requirements of the Merchant Shipping Act and the mercantile law of Great Britain in these particulars.

I have, &c.
(Signed) ABERDEEN.

Inclosure 2 in No. 1.

Report of a Committee of the Honourable the Privy Council, approved by his Excellency the Governor-General in Council on the 9th March, 1894.

ON a Report, dated the 6th March, 1894, from the Minister of Marine and Fisheries, stating with reference to the approved Minute of Council of the 20th February, 1894, touching the ownership of some of the vessels which suffered losses by reason of seizures and other molestation, by the United States' Government in Behring Sea, that he has had under further consideration the position taken by the United States' Government as defined in the Counter-Case of the United States before the Tribunal of Arbitration, in disputing the ownership of the vessels in question.

The Minister submits that this question cannot be satisfactorily dealt with at the present stage of these claims.

The papers relating to it which have come to the possession of your Excellency's Government have been submitted for the information of Her Majesty's Government.

Respecting the method to establish the ownership, it appears that the authorities of the United States formally refused to recognize the proof of ownership as furnished, but they have given no further intimation of what evidence is required. If, however, further proof is to be a matter of negotiation between the two Governments, instead of considering what further proof can be adduced, it appears that it should be ascertained from the United States' Government what further proof it desires.

The Minister suggests that it should be ascertained whether the United States desires an oral examination of witnesses, or an inquiry into the state of the liens on these vessels, or whether written depositions on these points would be satisfactory.

The Minister also suggests that the views of Her Majesty's Government should be sought as to an inquiry of that kind being made. Also, whether it will be insisted by Her Majesty's Government that the ownership and national character of these vessels shall be decided according to the facts which give that character under the Merchant Shipping Act and mercantile law of Great Britain, in so far as it bears on proof of ownership and national character.

These suggestions it is expected may lead to the ascertainment of the views of the United States' Government on the further point whether some Tribunal or Commission is to be established for hearing these claims, and whether the procedure before the Tribunal is to be regulated by the Convention which is to establish it. If the Tribunal is to be established by Convention without any order of procedure being settled, it will doubtless be for the Tribunal itself to define the nature of the evidence to be admitted, and further proof required; also, as to whether such as has already been adduced is considered satisfactory evidence of nationality and ownership.

The Committee, on the recommendation of the Minister of Marine and Fisheries, advise that your Excellency be moved to forward a certified copy of this Minute, if approved, to the Right Honourable the Principal Secretary of State for the Colonies, for the consideration of Her Majesty's Government.

All of which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. McGEE,
Clerk of the Privy Council.

No. 2.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, May* 10, 1894.

YOU should urge the United States' Government to commence negotiations on the subject of the claims of British sealers seized by the United States' cruizers in Behring Sea, as soon as you have carried out the instructions contained in my telegram

of the 8th instant, authorizing you to exchange notes with Mr. Gresham respecting the Sealing Regulations.

When you are ready for a Canadian Delegate, you can telegraph to the Canadian Government to send one.

No. 3.

Sir J. Pauncefote to the Earl of Kimberley.—(Received May 10.)

(Telegraphic.) *Washington, May 10, 1894.*

BEHRING SEA. With reference to your Lordship's telegram of to-day, I arranged yesterday with Mr. Gresham for the exchange of notes, and discussed with him at the same time the question of the settlement of the British claims, which he is quite ready to take up.

I venture to suggest that the most inexpensive and expeditious process might be to appoint a Commissioner on each side to verify the claims at Victoria, British Columbia, and make a joint Report, so far as they could agree, assessing the damages on each claim, and, where they failed to agree, stating the grounds of their disagreement. The two Governments could then either refer the points in difference to an Umpire, or determine them themselves.

If the above suggestion meets with your Lordship's approval, would it not be well before sending for the Canadian Delegate to consult the Canadian Government and settle the basis of the Convention?

No. 4.

Foreign Office to Colonial Office.

Sir, *Foreign Office, May 10, 1894.*

THE Earl of Kimberley has had under his consideration your letter of the 8th instant, inclosing a despatch from the Governor-General of Canada respecting the claims of British subjects in respect of the illegal seizure of their sealing-vessels in Behring Sea by the authorities of the United States.

I am directed by his Lordship to state, in reply, for the information of the Marquess of Ripon, that a telegram has this day been sent to Her Majesty's Ambassador at Washington, instructing him to press the United States' Government to begin negotiations respecting these claims as soon as the notes relating to the Naval Regulations and arrangements under Articles 4 and 7 of the Award shall have been exchanged.

His Excellency has at the same time been authorized to telegraph to Canada for a Delegate when his services are required.

Lord Kimberley would suggest that the Canadian Government should be asked to communicate to Sir J. Pauncefote the substance of the inclosures to your letter now under reply.

I am, &c.
(Signed) H. PERCY ANDERSON.

No. 5.

Foreign Office to Colonial Office.

Sir, *Foreign Office, May 11, 1894.*

WITH reference to my letter of yesterday's date relating to claims arising out of the seizures of British sealers in Behring Sea by the United States' authorities, I am directed by the Earl of Kimberley to transmit to you, to be laid before the Marquess of Ripon, the accompanying telegram from Her Majesty's Ambassador at Washington,* stating that he has arranged with the Secretary of State for the exchange of notes respecting the Naval Regulations and the Articles 4 and 7 of the Award, and that the United States' Government are quite ready to take up the question of British claims.

Sir Julian Pauncefote suggests a mode of procedure with regard to these claims which he considers would be the most expeditious and inexpensive way of dealing with them, and I am to state that Lord Kimberley would be glad to learn Lord Ripon's views as to his Excellency's proposition with as little delay as possible.

I am, &c.
(Signed) H. PERCY ANDERSON.

No. 6.

Colonial Office to Foreign Office.—(*Received May* 16.)

Sir, *Downing Street, May* 16, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letters of the 10th and 11th instant respecting the claims of British subjects in respect of the illegal seizure of their sealing-vessels in Behring Sea by the authorities of the United States.

Lord Ripon desires me to inclose, for the information of the Earl of Kimberley, a copy of a telegram which he has addressed to the Governor-General of Canada on the subject of Sir Julian Pauncefote's telegram of the 10th instant;* and he desires me to say that he thinks it will be as well to have the views of the Government of Canada before settling the basis of the proposed Convention, and that, as that may give rise to discussion, he thinks it might expedite matters if a Canadian Delegate, fully instructed as to the views of the Dominion Government, were to proceed to Washington at once, but before expressing a final opinion Lord Ripon proposes to await the reply from the Governor-General to the telegram inclosed.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure in No. 6.

The Marquess of Ripon to the Earl of Aberdeen.

(Telegraphic.) *Downing Street, May* 11, 1894.

REFERRING to your despatch of 15th March, compensation claims, see Sir J. Pauncefote's telegram of the 10th May. Communicate to him substance of your despatch, and telegraph views of your Ministers as to proposals contained in telegram from him.

No. 7.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received June* 1.)

(Telegraphic.) *Washington, May* 31, 1894.

I HAVE the honour to report that the Canadian Government have approved the arrangement suggested in my telegram of the 10th instant, and that the United States' Government have entertained it favourably.

I should be glad to know whether I may now send in officially to the United States' Government the Behring Sea claims, including the additions made to them, and propose a Convention on the basis of the arrangement above referred to, for their verification and adjustment.

---

* No. 3.

No. 8.

Foreign Office to Colonial Office.

Sir, *Foreign Office, June* 1, 1894.

WITH reference to my letter of the 11th ultimo relative to the British Behring Sea claims, I am directed by the Earl of Kimberley to transmit to you, to be laid before the Marquess of Ripon, the accompanying telegram from Her Majesty's Ambassador at Washington,* stating that the arrangement proposed in his Excellency's telegram of the 10th ultimo is approved by the Canadian Government, and favourably entertained by that of the United States.

Under these circumstances, Sir Julian Pauncefote inquires whether we may officially present the whole of these claims to the United States' Government, and propose a Convention for their verification and settlement on the basis of the arrangement already proposed by his Excellency.

Lord Kimberley proposes to authorize Sir J. Pauncefote to adopt this course should Lord Ripon concur therein.

I am, &c.
(Signed) FRANCIS BERTIE.

No. 9.

Colonial Office to Foreign Office.—(Received June 5.)

Sir, *Downing Street, June* 5, 1894.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 1st instant, transmitting a telegram from Her Majesty's Ambassador at Washington relative to the Behring Sea claims.

In reply, I am to state, for the information of the Earl of Kimberley, that his Lordship concurs in Lord Kimberley's proposal to authorize Sir J Pauncefote to adopt the course suggested in his telegram.

I am, &c.
(Signed) JOHN BRAMSTON.

No. 10.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, June* 5, 1894.

YOU may send in officially to the United States' Government the British claims arising out of the seizure of sealing-vessels in the Behring Sea, and you may propose the conclusion of a Convention for their verification and settlement, as suggested in your telegram of the 31st May.

No. 11.

Sir J. Pauncefote to the Earl of Kimberley.—(Received June 13.)

(Telegraphic.) *Washington, June* 12, 1894.

WITH reference to your Lordship's telegram of the 5th instant respecting Behring Sea, I have the honour to report that I have forwarded to your Lordship, in my despatch of the 8th instant, a copy of my note to Mr. Gresham transmitting the Behring Sea claims, and proposing a mode of settlement.

I have also sent a copy of this note to Lord Aberdeen.

As the President is indisposed, and Mr. Gresham is about to leave Washington for a short period, I do not expect to receive an official reply for ten days or more.

But the Secretary of State tells me that the President approves the proposal, and, in accordance with his request, I am preparing a scheme of Convention for consideration before requesting the assistance of a Canadian Delegate.

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* No. 7.

No. 12.

Sir J. Pauncefote to the Earl of Kimberley.—(Received June 18.)

My Lord, *Washington, June 8, 1894.*

ON the receipt of your Lordship's telegram of the 5th instant, I addressed a note to Mr. Gresham (copy of which I have the honour to inclose) on the Behring Sea claims.

I shall not fail to forward to your Lordship a copy of Mr. Gresham's reply to my communication as soon as I receive it.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 12.

Sir J. Pauncefote to Mr. Gresham.

Sir, *Washington, June 7, 1894.*

ADVERTING to the verbal communications which have passed between us respecting the best mode of verifying and adjusting the British claims for compensation for the seizure of British sealing-vessels in Behring Sea, I have now the honour to transmit herewith, by direction of Her Majesty's Principal Secretary of State for Foreign Affairs, a complete list and summary of those claims, together with Memoranda of the additions and amendments made since their original presentation. I am at the same time to make the following suggestion, with a view to adjustment of those claims, with the least possible expense and delay.

The whole of the claims, excepting that of the "Henrietta" and that of the "Black Diamond" (1886), were laid before the Tribunal of Arbitration at Paris, together with the evidence in support of them. The facts on which they rest were found by the Arbitrators as provided by Article VIII of the Treaty of Arbitration, and formed part of the Award. In view of the decision of the Tribunal on the questions of law submitted to them, it only now remains to assess the damages. I am accordingly authorized by the Earl of Kimberley to propose that, for the purpose of such assessment, each Government should appoint a duly qualified Commissioner, who should be a lawyer, and, if possible, possess some knowledge of the conditions of the seal industry.

That the two Commissioners should sit together at Victoria, British Columbia, where all the evidence in verification of the claims can be obtained on the spot.

That they should make a joint report on all the claims in which they have agreed as to the amount of damages, and separate reports of the cases in which they have failed to agree, fully stating the grounds of such disagreement.

That the assessment of damages by the two Commissioners, where they have been able to agree, shall be final.

That in cases where they have been unable to agree, the differences shall be settled by the two Governments within a fixed period, failing which, such differences shall be referred for final adjustment to an Umpire to be appointed by the two Governments jointly, or, in case of disagreement, to be nominated by a foreign Government.

You informed me some time ago that, in the view of your Government, a Convention would be necessary for the adjustment of the claims, and the Earl of Kimberley, to whom I did not fail to communicate that opinion, has instructed me to proceed at once with the negotiation of such a Convention, on the basis of the arrangement above proposed, should it be favourably entertained by your Government.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure 2 in No. 12.

List and Summary of Behring Sea Claims.

"CAROLENA."

(Seized by United States' ship "Corwin," August 1, 1886.)

For—	Amount of Claim as put forward by Owner.
	Dol. c.
Value of vessel, 32 tons	4,000 00
,, outfit (inconsumable)	3,002 89
Insurance	352 50
Wages of crew up to date of seizure	1,832 22
Passage of crew from San Francisco to Victoria	71 72
,, mate, Sitka to Victoria, after release from prison ..	100 00
Personal expenses of owner	250 00
Legal expenses..	1,250 00
Estimated seal catch for 1886	16,667 00
	27,526 33
Deduct value consumed during a full voyage	3,213 32
Claim by owner, with interest at 7 per cent. to date of payment	24,313 01

"THORNTON."

(Seized by United States' ship "Corwin," August 1, 1886.)

Value of vessel, 78 tons	6,000 00
,, outfit (inconsumable)	2,941 60
Insurance	591 40
Wages paid to date of seizure to crew, &c.	1,370 04
Passage-money of crew from San Francisco to Victoria ..	177 16
,, ,, and expense of captain and mate after release, Sitka to Victoria	200 00
Personal expenses of owners	1,000 00
Legal expenses..	1,250 00
Estimated catch of seals for 1886	16,667 00
	30,197 23
Deduct value consumed on a full voyage	3,379 58
Claim by owners, with interest at 7 per cent to date of payment	26,817 65

"ONWARD."

(Seized by United States' ship "Corwin," August 2, 1886.)

Value of vessel, 94 tons	4,000 00
,, outfit (inconsumable)	1,778 69
Insurance	260 00
Wages paid for voyage	1,820 00
Passage, &c., of master and mate	200 00
Personal expenses of owner	250 00
Legal expenses..	1,250 00
Estimated catch	16,667 00
	26,225 69
Deduct value consumed during full voyage	2,955 98
Claimed by owner, with interest at 7 per cent. to date of payment..	23,269 71

"FAVOURITE."

(Warned out of Behring Sea by United States' ship "Corwin," August 2, 1886.)

For—	Amount of Claim as put forward by Owner.
	Dol. c.
Estimated loss of catch of 1,000 seals	7,000 00
Claim by owner, with interest at 7 per cent. to date of payment	7,000 00

"W. P. SAYWARD."

(Seized by United States' ship "Richard Rush," July 9, 1887.)

Passage of crew, &c.	255 00
„ officers	250 00
Legal expenses of owners	850 00
Probable seal catch, 1887, 3,500 seals, at 5 dol. 50 c.	19,250 00
Loss by detention, October 1, 1887, to February 1, 1888 ..	1,200 00
„ of profit in season 1888 (February 1 to October 1) ..	6,000 00
Personal expenses of owners	250 00
Claim by owner, with interest at 7 per cent. to date of payment ..	28,055 00
Cost of suit before Supreme Court, United States, *in re* seizure of "W. P. Sayward"	62,847 12
Total	90,902 12

"GRACE."

(Seized by United States' ship "Richard Rush," July 17, 1887.)

Value of vessel, 182 tons	12,000 00
Nonconsumable outfit	1,742 57
Passage of master and crew	200 00
Personal expenses of owners	250 00
Legal expenses	850 00
Probable catch, 1887, 4,200 seals, at 5 dol. 50 c.	23,100 00
Claim of owner, with interest at 7 per cent. to date of payment	38,142 57

"ANNA BECK."

(Seized by United States' ship "Richard Rush," June 28, 1887.)

Value of vessel	8,000 00
Nonconsumable outfit	977 50
Passage of master and crew	460 54
Personal expenses of owner	250 00
Legal expenses	850 00
Probable seal catch, 1887, 3,150, at 5 dol. 50 c.	17,325 00
Claim of owner, with interest at 7 per cent. to date of payment	27,863 04

"DOLPHIN."

(Seized by United States' ship "Richard Rush," July 12, 1887.)

Value of vessel, 174 tons	12,000 00
„ nonconsumable outfit	2,051 50
Passage of master and crew	300 00
Personal expenses of owner	250 00
Legal expenses	850 00
Probable catch, 1887, 4,500, at 5 dol. 50 c.	24,750 00
Claim of owner, with interest at 7 per cent. to date of payment	40,201 50

"ALFRED ADAMS."

(Seized by United States' ship "Richard Rush," July 10, 1887.)

For—	Amount of Claim as put forward by Owner.
	Dol. c.
Value of outfit seized	663 00
Personal expenses	200 00
Legal expenses	300 00
Probable catch, 3,500, at 5 dol. 50 c.	19,250 00
Claim of owner, with interest at 7 per cent. to date of payment	26,433 00

"ADA."

(Seized by United States' ship "Bear," August 25, 1887.)

Value of vessel, 68 tons	7,000 00
" nonconsumable outfit	2,500 00
Passage, &c., of master	100 00
Personal expenses	250 00
Legal expenses	850 00
Probable catch, 1887, 2,876, at 5 dol. 50 c.	15,818 00
Claim of owner, with interest at 7 per cent. to date of payment	26,518 00

"TRIUMPH."

(Ordered not to enter Behring Sea by United States' ship "Richard Rush," August 4, 1887.)

Illegal boarding and searching of "Triumph," as set forth in affidavit	2,000 00
1,000 seal-skins	8,000 00
Legal and other expenses	250 00
Claim of owner, with interest at 7 per cent. to date of payment	10,250 00

"JUANITA."

(Seized by United States' ship "Richard Rush," July 31, 1889.)

620 seal-skins, at 8 dollars	4,960 00
Balance of estimated catch for 1889, at 8 dollars	9,424 00
Spears, &c.	36 00
New ship's papers	25 00
Legal and other expenses	250 00
Claim of owner, with interest at 7 per cent. to date of payment	14,695 00
For amended claim, see Memoranda	17,697 66

"PATHFINDER."

(Seized by United States' ship "Richard Rush," July 29, 1889.)

854 skins seized, and estimated balance of catch (1,246), at 12 dol. 25 c. a-skin	25,725 00
Guns, &c., seized	765 00
New papers	25 00
Legal expenses	250 00
Claim of owner, with interest at 7 per cent. to date of payment	26,765 00

"TRIUMPH."

(Ordered out of Behring Sea by United States' ship "Richard Rush," July 11, 1889.)

For—	Amount of Claim as put forward by Owner.
	Dol. c.
Balance of estimated catch of 2,500, at 8 dollars a-skin ..	19,424 00
Legal and other expenses..	250 00
Claim by owner, with interest at 7 per cent. to date of payment	19,674 00

"BLACK DIAMOND."

(Seized by United States' ship "Richard Rush," July 11, 1889.)

76 skins seized, at 8 dollars	608 00
2,024 skins, balance of estimated catch, at 8 dollars	16,192 00
Rifles, spears, &c., seized	110 00
New ship's papers	25 00
Legal and other expenses..	250 00
Claim of owner, with interest at 7 per cent. to date of payment	17,185 00

"LILY."

(Seized by United States' ship "Richard Rush," August 6, 1889.)

333 skins seized, at 8 dollars	2,664 00
Balance of catch, 1,767, at 8 dollars	14,136 00
Spears and salt seized	101 00
New ship's papers	25 00
Legal and other expenses..	250 00
Claim of owner, with interest at 7 per cent. to date of payment	17,176 00

"ARIEL."

(Ordered out of Behring Sea by United States' ship "Richard Rush," July 30, 1889.)

Balance of estimated catch of 2,000 (1,156), at 8 dollars ..	9,248 00
Legal and other expenses..	250 00
Claim of owner, with interest at 7 per cent. to date of payment	9,498 00

"KATE."

(Ordered out of Behring Sea by United States' ship "Richard Rush," August 13, 1889.)

Balance of catch	10,960 00
Legal and other expenses..	250 00
Claim of owner, with interest at 7 per cent. to date of payment	11,210 00

"MINNIE."

(Seized by United States' ship "Richard Rush," July 5, 1889.)

For—	Amount of Claim as put forward by Owner.
	Dol. c.
420 skins seized	3,360 00
Balance of catch	12,752 00
Guns and spears seized	98 00
Legal and other expenses..	250 00
Claim of owner, with interest at 7 per cent. to date of payment	16,460 00

"PATHFINDER."

(Seized by United States' ship "Thomas Corwin," March 27, 1890.)

Seizure and detention from March 27, 1890, to March 29, 1890..	2,000 00
Claim of owner, with interest at 7 per cent. to date of payment	2,000 00

CLAIMS FOR 1886.

Claimed by—	For—	Amount claimed
		Dol. c.
David Moore, master of "Onward" ..	Illegal arrest and imprisonment ..	4,000 00
Margotich, mate of "Onward"	Ditto	2,500 00
Hans Guttornasen, master of "Thornton" ..	Ditto	4,000 00
Harry Norman, mate of "Thornton" ..	Ditto	2,500 00
Jas. Ogilvie, master of "Carolena" ..	Ditto	2,500 00
Jas. Black, mate of "Carolena"	Ditto	2,500 00
Total for 1886	.. ..	18,000 00

CLAIMS FOR 1887.

Warren, master of "Dolphin"	Sufferings and losses navigating four vessels from Unalaska to Sitka	2,635 00
John Rielv, mate of "Dolphin"	Ditto	1,000 00
George P. Ferey, master of "W. P. Sayward"	Ditto	2,000 00
A. B. Laing, mate of "W. P. Sayward" ..	Ditto	1,000 00
Louis Olsen, master of "Anna Beck" ..	Ditto	2,000 00
Michael Keefe, mate of "Anna Beck" ..	Ditto	1,000 00
W. Petit, master of "Grace"	Ditto	2,000 00
C. A. Lundberg, mate of "Ada"	Ditto	2,000 00
Total for 1887	.. ..	13,635 00
Total for 1886 and 1887	.. ..	31,635 00
To be added to 1886, personal claims, Captain Gaudin, of "Ada"	.. ..	3,000 00
Amended total, 1886 and 1887 ..	.. ..	34,635 00

Recapitulation.

Year.	Vessel.	Amount claimed.	Total.
		Dol. c.	Dol. c.
1886	Carolena	24,313 01	
	Thornton	26,817 65	
	Onward	23,269 71	
	Favourite	7,000 00	
	Personal claims	18,000 00	
			99,400 37
1837	W. P. Sayward	28,055 00	
	Grace	38,142 57	
	Anna Beck	27,863 04	
	Delphin	40,201 50	
	Ada	26,518 00	
	Alfred Adams	20,433 00	
	Triumph	10,250 00	
	Personal claims	13,635 00	
			205,098 11
1889	Juanita	14,695 00	
	Pathfinder	26,765 00	
	Triumph	19,674 00	
	Black Diamond	17,185 00	
	Lily	17,176 00	
	Ariel	9,498 00	
	Minnie	16,460 00	
	Kate	11,210 00	
			132,663 00
1890	Pathfinder	..	2,000 00
	Total claims without interest	..	439,161 48
	Costs of suit before Supreme Court, United States, *in re* seizure of "W. P. Sayward"	..	62,847 12

Total.

	Dol. c.
1886—	
Vessels	81,400 37
Personal claims	18,000 00
1887—	
Vessels	191,463 11
Personal claims	13,635 00
1889—	
Vessels	132,663 00
1890—	
Vessels	2,000 00
"W. P. Sayward" costs	439,161 48
Total	62,847 12
Extra for "Juanita"	502,008 60
" "Black Diamond" (1886)	3,002 66
" "Ada"	7,500 00
Total	3,000 00
"Henrietta"	515,511 26
Amended total	26,658 00
	542,169 26

Inclosure 3 in No. 12.

*Memoranda of Additions and Amendments made since the original Presentation of Behring Sea Claims.**

"Ada."

Claim of the Master, Captain Gaudin, for Personal Loss and Damage, 3,000 dollars.

THIS claim was, by a mistake on the part of the agent of the owner of the "Ada," not included when the other claims in connection with this vessel were entered. Captain Gaudin thought that it had been so included, and it was only on seeing the printed list of the British claims that he discovered that such was not the case. He at once requested that the omission might be rectified, and his claim added to the list, and Her Majesty's Government, after causing an inquiry to be made into the circumstances of the case, decided that his application should be granted.

Captain Gaudin's claim has accordingly been added to the schedule of the claims entered with respect to the schooner "Ada."

"Henrietta."

Seized by the United States' War-ship "Yorktown" on September 4, 1892.

	Dollars.
Value of vessel	4,000
„ outfit and equipment	3,000
„ 420 seal-skins, at 18 dollars	7,560
„ balance of estimated full catch for season in Behring Sea for three boats and three canoes, viz., 561 skins at 18 dollars	10,098
Legal and personal expenses in defending action against vessel and cargo at Sitka and in preparing and forwarding this claim	2,000
Claim of owner, with interest at 7 per cent. to date of payment ..	26,658

In his note, dated the 13th March last, Mr. Gresham stated, that from the date on which the "Henrietta" was handed over to her captain the United States' Government ceased to bear any responsibility or to exercise any control with regard to that vessel, and that therefore they were unable to comply with the request of Her Majesty's Government, that she should be sent to a British port for trial; but, he added, that the claim of her owner for compensation would receive due consideration when presented.

The claim in question has therefore been added to the general list of British claims.

"Black Diamond."

Additional claim submitted by the master, Mr. Henry Paxton, for damages alleged to have been sustained by reason of the above schooner having been ordered out of Behring Sea in 1886 by the United States' authorities.

Estimated catch for August 1886 1,000 skins, at 7 dols. 50 c. each (the price of skins at Victoria during the fall of 1886), 7,500 dollars.

This claim was sent in too late for insertion in the general list of British claims. In view of the length of time that had elapsed since the occurrence of the action complained of, Her Majesty's Government deemed it advisable to cause an inquiry to be made as to the reason for the delay in presenting the claim. The reason given was that at the time of the seizure of the vessel the co-owners, who were three in number, were doubtful as to how far an appeal to the United States' Government for redress would be entertained. In the following year one of the owners was lost at sea and another left the country, and it was only after the publication of the Award

* To these will be added the claim on account of the "Winnifred," when the amount has been ascertained.

that the surviving owner consulted his solicitor, and was informed that he had a good and equitable claim for compensation. The claim was then drawn up and presented at once.

Her Majesty's Government also ascertained from the solicitors in question that the fact of the "Black Diamond" being boarded by the revenue officers of the United States, and ordered out of Behring Sea in 1886, is entered in the records of the Custom-house of Unalaska, and that due protest was made by the master of the vessel on the arrival of the schooner at Victoria.

Under the circumstances, Her Majesty's Government considered that the reasons alleged for the delay were reasonable, and gave instructions that the claim should be presented to the United States' Government, together with the other similar claims.

"JUANITA."

It will be noticed that the original claim of the owner of the "Juanita," which was stated at 14,695 dollars, has been amended so as to amount to 17,697 dols. 66 c.

The ground upon which this claim was amended was that the owner made his original statement on the basis of 8 dollars per skin, whereas it was ascertained afterwards that the skins had been sold at San Francisco at an average of 9 dols. 67 c. per skin.

No. 13.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received July* 14.)

(Telegraphic.) *Washington, July* 13, 1894.

WITH reference to my telegram to your Lordship of the 12th instant respecting the Behring Sea claims, I have the honour to report that, while discussing with the Secretary of State the terms of the proposed Convention, I was requested by him to ascertain whether Her Majesty's Government would be disposed to settle those claims for a lump sum. If so, he was of opinion that there would be no difficulty in obtaining from Congress an appropriation for whatever amount should be agreed upon. Should no agreement be arrived at, the Convention would proceed.

If the above course be acceptable, an expert should be sent at once to Washington by the Canadian Government to discuss the amount.

No. 14.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, July* 18, 1894.

IN your telegram of the 13th instant you reported that Mr. Gresham had proposed the payment by the United States' Government of a lump sum in settlement of the British claims arising out of the seizure of British sealing-vessels in Behring Sea.

You should communicate this proposal to the Canadian Government, to whom we are telegraphing for an expression of their views.

No. 15.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received July* 19.)

(Telegraphic.) *Washington, July* 19, 1894.

BEHRING SEA Claims Convention: your Lordship's telegram of yesterday.

I have supplied the Canadian Government with full information. They have accepted proposal, and their Delegate is ready to start for this city when required.

No. 16.

Sir J. Pauncefote to the Earl of Kimberley.—(Received August 4.)

(Telegraphic.) *Washington, August 3, 1894.*

BEHRING SEA claims: my despatch of the 8th June last.

With interest, I reckon the total amount of the claims sent in at about 700,000 dollars. In order to get rid of the Convention, with its delay and expense, I have reason to believe that this Government would be willing to pay a lump sum of 400,000 dollars down.

In case I am able to obtain a further sum of 50,000 dollars, would that settlement be accepted by Canada and approved by your Lordship?

No. 17.

Colonial Office to Foreign Office.—(Received August 6.)

Sir, *Downing Street, August 6, 1894.*

WITH reference to your letter of the 4th instant,* I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, a copy of a telegram which has been sent to the Governor-General of Canada, inquiring whether his Ministers would be disposed to accept the sum of 450,000 dollars in settlement of the Behring Sea claims.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure in No. 17.

The Marquess of Ripon to the Earl of Aberdeen.

(Telegraphic.) *Downing Street, August 4, 1894, 2·10 P.M.*

TOTAL Behring Sea claims, with interest, estimated 700.000 dollars. Ambassador at Washington has reason to believe that United States' Government would offer 400,000 dollars to avoid delay and expense of Convention.

Would Ministers accept 450,000 dollars if it can be obtained?

No. 18.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, August 6, 1894.*

I HAVE received your telegram of the 3rd instant on the subject of the Behring Sea claims.

The Dominion Government have been consulted by telegraph as to accepting 450,000 dollars in settlement thereof. You shall be informed of their reply as soon as it is received.

No. 19.

Colonial Office to Foreign Office.—(Received August 9.)

Sir, *Downing Street, August 9, 1894.*

WITH reference to the letter from this Department of the 6th instant, I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, a copy of a telegram from the Governor-General of Canada, stating that his

* Forwarding copy of No. 16.

Ministers would be prepared to accept the sum of 450,000 dollars in settlement of the Behring Sea claims.

I am, &c.
(Signed) JOHN BRAMSTON.

Inclosure in No. 19.

The Earl of Aberdeen to the Marquess of Ripon.

(Telegraphic.) *August* 4, 1894.

YOUR telegram of the 4th August.

I have received following telegram from my Prime Minister:—

"Your Excellency's telegram *re* lump sum.

"I would advise acceptance of 450,000 dollars."

No. 20.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, August* 10, 1894.

I HAVE received your telegram of the 3rd instant on the subject of the Behring Sea claims, and I authorize you to accept the sum of 450,000 dollars in settlement thereof.

No. 21.

Sir J. Pauncefote to the Earl of Kimberley.—(Received August 10.)

(Telegraphic.) *Washington, August* 10, 1894.

BEHRING Sea Claims Convention: your Lordship's telegram of the 9th instant.

I regret to have to report that the President is unwilling to offer more than 400,000 dollars. He is anxious that the question should be settled before the adjournment of Congress, and he hopes that, in case Her Majesty's Government should be unable to accept the sum proposed, the Convention will be signed at once.

No. 22.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, August* 16, 1894.

HER Majesty's Government have suggested to the Dominion Government, by telegraph, that one of the Canadian Ministers should proceed to Washington at once, with a view to completing arrangements with you either for the Convention or for a lump sum in settlement of the Behring Sea claims.

No. 23.

Sir J. Pauncefote to the Earl of Kimberley.—(Received August 17.)

(Telegraphic.) *Washington, August* 16, 1894.

BEHRING SEA claims.

I have to-day succeeded in obtaining from Mr. Gresham an offer of a lump sum of 425,000 dollars in satisfaction of all claims provable under the proposed Convention. It was understood that this would include the 'Winnifred' claim. Necessary appropriation can be obtained this Session if this offer be accepted at once. The Secretary of State urgently requests immediate reply

If Canada agrees to accept the lump sum which is now offered, will your Lordship authorize me to make a settlement on that basis?

No. 24.

Colonial Office to Foreign Office.—(*Received August* 20.)

Sir, *Downing Street, August* 18, 1894.

WITH reference to previous correspondence respecting the Behring Sea claims, I am directed by the Marquess of Ripon to transmit to you, for the information of the Earl of Kimberley, a copy of a telegram from the Governor-General of Canada, reporting that Sir C. H. Tupper, Minister of Marine and Fisheries, has gone to Washington to discuss the matter with Her Majesty's Ambassador.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 24.

The Earl of Aberdeen to the Marquess of Ripon.

(Telegraphic.) (*Received August* 17, 1894, 5·20 P.M.)

IN reply to your Lordship's telegram of the 15th instant, I have to-day telegraphed to Ambassador at Washington as follows:—

My Prime Minister, in reply to suggestion of Her Majesty's Government that a Minister should proceed to Washington, telegraphed last night as follows: "I have asked Sir C. H. Tupper to go at once."

No. 25.

Colonial Office to Foreign Office.—(*Received August* 27.)

Sir, *Downing Street, August* 25, 1894.

WITH reference to the Behring Sea compensation claims, I am directed by the Marquess of Ripon to transmit to you, to be laid before the Earl of Kimberley, a telegram received from the Governor-General of Canada, reporting that Sir C. Tupper had left Washington, and had agreed to accept the sum of 425,000 dollars if paid this year.

I am, &c.

(Signed) JOHN BRAMSTON.

Inclosure in No. 25.

The Earl of Aberdeen to the Marquess of Ripon.

(Telegraphic.) (*Received August* 22, 1894.)

MY Prime Minister has telegraphed to me to the effect that Sir C. Tupper has left Washington, and has agreed to accept the sum of 425,000 dollars if the amount is paid this year.

No. 26.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received August* 29.)

(Extract.) *Washington, August* 21, 1894.

I HAVE the honour to report that Sir C. Tupper, the Canadian Minister of Marine, arrived on Saturday last to discuss with me the position of the pending negotiations respecting the Behring Sea claims.

We called the same day on the Secretary of State, and yesterday morning Sir Charles Tupper, at my request, accompanied me to the State Department, where we had an interview with Mr. Gresham.

We then discussed the question of the lump sum, and Mr. Gresham stated that a week ago the appropriation of the money by Congress could easily have been obtained, but it was too late now owing to the departure of the Members and of the impracticability of obtaining a voting quorum.

He added, however, that there would be no difficulty in getting the appropriation voted on the meeting of Congress in December next.

He therefore suggested that the lump sum might be accepted subject to the right of Her Majesty's Government to resume the negotiations for the Convention at any time before the appropriation should be actually made.

This proposal, appearing satisfactory to Sir Charles Tupper, was accepted by me, and I have now the honour to inclose copies of the notes exchanged between Mr. Gresham and myself recording the arrangement.

Sir Charles Tupper left for Ottawa this morning.

Inclosure 1 in No. 26.

Mr. Gresham to Sir J. Pauncefote.

Excellency, *Department of State, Washington, August* 21, 1894.

REFERRING to our verbal communications of a recent date, I have now the honour formally to acknowledge the receipt of your note of the 7th June last, in which you propose, in behalf of Her Majesty's Government, the establishment of a Mixed Commission for the purpose of verifying and adjusting the British claims for compensation for the seizure of British sealing-vessels in Behring Sea.

While no serious difficulty is anticipated in settling and determining the claims by means of a Mixed Commission, it is a matter of interest to both Governments that they should, if possible, be disposed of in a simpler and less expensive way. Proceedings by a Mixed Commission, while always more or less formal and cumbersome, are, like all other processes of litigation, necessarily attended with expense, not infrequently considerable in amount, as well as with delay.

In the present case, the Award and findings of the Tribunal of Arbitration in Paris have, to a great extent, determined the facts and the principles on which the claims should be adjusted; and in the course of the negotiations for a Mixed Commission, they have been subjected by both Governments to a thorough examination both upon the principles and facts which they involve.

Under these circumstances the President, after full consideration of the whole subject, has reached the conclusion that it may be practicable, as well as advantageous, to effect a direct settlement of the claims by the payment of a lump sum in full satisfaction of all demands for damages against the United States growing out of the controversy between the two Governments as to the fur-seals in Behring Sea, and to this end I am instructed by the President to propose the sum of 425,000 dollars.

This proposition, if it should prove to be acceptable to Her Majesty's Government, is to be understood as having been made subject to the action of Congress on the question of appropriating the money. The President can only undertake to submit the matter to Congress at the beginning of its Session in December next, with a recommendation that the money be appropriated and made immediately available for the purpose above expressed; and if at any time before the appropriation is made your Government shall desire, it is understood that the negotiations on which we have for some time been engaged for the establishment of a Mixed Commission will be renewed.

I have, &c.
(Signed) W. Q. GRESHAM.

Inclosure 2 in No. 26.

Sir J. Pauncefote to Mr. Gresham.

Sir, *Washington, August* 21, 1894.

I HAVE the honour to acknowledge the receipt of your note of this date on the subject of our recent negotiations for the adjustment, by means of a Mixed Commission, of the claims of Great Britain against the United States in respect of the

seizure of British sealing-vessels by United States' cruisers in Behring Sea. You state that the President, after full consideration, is of opinion that it would be in the interest of both Governments to effect the direct settlement of claims by the payment of a lump sum, in order to avoid the delay and expense of a Mixed Commission, and that you have been instructed to propose the sum of 425,000 dollars.

You also state that the proposal is made subject to the necessary appropriation by Congress, to which it would be submitted at the beginning of its Session in December next, with a recommendation that the money be immediately available for the purpose above mentioned.

You add that if at any time before the appropriation is made Her Majesty's Government shall desire it, the negotiations for the establishment of a Mixed Commission shall be resumed.

I have the honour to state, in reply, that Her Majesty's Government concur in the views of the President as to the expediency of effecting a settlement by the method proposed, and that they are, indeed, so fully sensible of the great advantages presented to both Governments by that course that they are willing to accept the sum offered, coupled with the assurance of prompt payment, although the amount is much below their estimate of the compensation which might fairly be awarded by a Mixed Commission.

It should be understood, therefore, that if the negotiations for a Mixed Commission should be resumed, the acceptance of your proposal shall in no way prejudice the claimants in the further prosecution of their demands.

It only remains for me to express my gratification at this amicable solution of the last subject of discussion in the long Behring Sea controversy.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

No. 27.

The Earl of Kimberley to Mr. Goschen.

Sir, *Foreign Office, September* 8, 1894.

I HAVE received Sir Julian Pauncefote's despatch of the 21st ultimo, forwarding the notes exchanged between his Excellency and Mr. Gresham with regard to the settlement by the payment of 425,000 dollars of the claims against the United States in respect of the seizure of British sealing-vessels by United States' cruisers in Behring Sea.

Her Majesty's Government have learnt with much pleasure that this arrangement has been concluded, and desire to express their approval of Sir J. Pauncefote's language and action throughout the negotiations which have led to this satisfactory result.

I am, &c.
(Signed) KIMBERLEY.

No. 28.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received December* 31.)

My Lord, *Washington, December* 21, 1894.

I HAVE the honour to forward herewith an extract from the "Congressional Record" of the 15th instant, containing a Resolution brought forward in the House of Representatives by the Honourable Mr. Hitt, requesting the publication of all documents touching the payment by the United States of 425,000 dollars to Great Britain for damages growing out of the controversy as to fur-seals in Behring Sea.

This Resolution, together with a motion to reconsider the vote by which the Resolution was adopted, was laid on the Table.

I understand from Mr. Gresham that full particulars concerning the arrangements arrived at have been given to the Committee on Foreign Relations, and that there is

no reason to doubt that the money will be appropriated, notwithstanding the attempt made to obstruct the settlement.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

P.S.—It is stated in the "Congressional Record" of to-day that the Secretary of State has transmitted "Correspondence touching the Behring Sea controversy" to the House of Representatives, which has been ordered to be printed. I inclose an extract to that effect from the "New York World."

J. P.

Inclosure 1 in No. 28.

Extract from the "Congressional Record" of December 15, 1894.

THE BEHRING SEA CONTROVERSY.

Mr. Hitt.—Mr. Speaker, I desire to call up a privileged Resolution reported to-day from the Committee on Foreign Affairs.

The Speaker.—The Clerk will read the Resolution.

The Clerk read as follows:—

"*Resolved*,—That the Secretary of State be requested to communicate to the House of Representatives, if not inconsistent with the interests of the public service, all correspondence, Reports, and other documents not heretofore made public, touching the payment by the United States of 425,000 dollars to Great Britain for damages growing out of the controversy as to fur-seals in Behring Sea, or the seizure of British vessels engaged in taking seals in those waters."

Mr. Hitt.—That is an unanimous Report, Mr. Speaker.

Mr. McCreary, of Kentucky.—It is all right.

The Resolution was adopted.

On the motion of Mr. Hitt, a motion to reconsider the vote by which the Resolution was adopted was laid on the Table.

Inclosure 2 in No. 28.

Extract from the "New York World" of December 21, 1894.

BEHRING SEA DAMAGES.

Washington, December 20, 1894.

SECRETARY GRESHAM sent to the House the correspondence which resulted in the offer of the United States to pay 425,000 dollars as damages for seizures or warnings of British sealers declared by the Paris Tribunal to have been illegal. With it was a statement of the British claims. In his Report the Secretary says:—

"If the plan of settlement recited by the President in his Annual Message is not acceptable to Congress, the controverted questions must be determined, either by the organization of a Joint Commission, or by negotiations between the two Governments. Experience has shown that International Commissions are slow and expensive. Should such a course be resorted to, the evidence would be found mostly on the Pacific Coast, widely scattered, and counsel would be needed to examine and cross-examine witnesses.

"The question of indirect or consequential damages having been withdrawn from the Tribunal of Arbitration, the pending claims are for British vessels actually seized in Behring Sea or warned out of it by cruisers of the United States. It will appear from the submitted correspondence that the agreement to pay a lump sum of 425,000 dollars in full settlement of all demands, authorized to be made under the Treaty and Award, was proposed by this Government. The amount is considerably below the damages claimed by Great Britain, exclusive of interest for a number of years.

"If this arrangement does not receive the approval of Congress, and the disputed questions are submitted to an International Commission, it is believed that the amounts allowed and the expense of the Tribunal, including witnesses and the taking of their testimony, will largely exceed 425 000 dollars. In view of the facts and what may be reasonably expected as the result of a Commission, the Undersigned submits that a prompt and final settlement of the vexatious controversy by an appropriation of the lump sum agreed upon is advisable."

No. 29.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received February* 1.)

My Lord, *Washington, January* 21, 1895.

WITH reference to my despatch of the 21st December, I now have the honour to forward herewith to your Lordship printed correspondence touching the Behring Sea controversy, which has been laid before the House of Representatives pursuant to the House Resolution, dated the 15th December, 1894.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure in No. 29.

53rd Congress, 3rd Session.—Ex. Doc. No. 132.

HOUSE OF REPRESENTATIVES.

BEHRING SEA CONTROVERSY.

Letter from the Secretary of State, transmitting, pursuant to House Resolution, dated December 15, *the Correspondence touching the Behring Sea Controversy.*

December 21, 1894.—Referred to the Committee on Foreign Affairs, and ordered to be printed.

The Speaker of the House of Representatives:

THE Undersigned is directed by the President to respond to the Resolution adopted by your honourable Body on the 15th instant, requesting the Secretary of State "to communicate to the House of Representatives, if not inconsistent with the interests of the public service, all correspondence, Reports, and other documents not heretofore made public touching the payment by the United States of 425,000 dollars to Great Britain for damages growing out of the controversy as to fur-seals in Behring Sea, or the seizure of British vessels engaged in taking seals in those waters."

The Undersigned accordingly has the honour to communicate to the House of Representatives copies of the correspondence exchanged on the subject covered by the Resolution, in which will be found a statement of the claims filed by Great Britain for damages sustained by British subjects by reason of the seizure of their sealing-vessels in Behring Sea, or of being warned to cease operations therein.

The Paris Tribunal of Arbitration held that the United States had no right of protection or property in the fur-seals in Behring Sea outside the ordinary 3-mile limit.

Article VIII of the Convention of the 29th February, 1892, whereby the questions which had arisen between the two Governments concerning the jurisdictional rights of the United States in the waters of Behring Sea were submitted to arbitration, recited that the High Contracting Parties had been unable to agree upon a reference which would include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims

presented and urged by it, and that, being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions, they had agreed "that either may submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiation."

Under this Article the Arbitrators unanimously found that a number of British sealing-vessels were seized in Behring Sea or warned therefrom by cruisers of the United States on the days and at the places in the special finding mentioned, leaving for future determination the questions as to the value "of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States."

If the plan of settlement recommended by the President in his last Annual Message is not acceptable to Congress, the remaining controverted questions must be determined either by the organization of a Joint Commission, or by negotiations between the two Governments.

Experience has shown that International Commissions are slow and expensive. Should such a course be resorted to the evidence would be found mostly on the Pacific Coast, widely scattered, and counsel would be needed to examine and cross-examine witnesses.

The question of indirect or consequential damages having been withdrawn from the Tribunal of Arbitration, the pending claims are for British vessels actually seized in Behring Sea, or warned out of it by cruisers of the United States.

It will appear from the submitted correspondence that the agreement to pay a lump sum of 425,000 dollars in full settlement of all demands authorized to be made under the Treaty and Award was proposed by this Government. The amount is considerably below the damages claimed by Great Britain, exclusive of interest for a number of years.

If this arrangement does not receive the approval of Congress and the disputed questions are submitted to an International Commission, it is believed that the amounts allowed and the expense of the Tribunal, including witnesses and the taking of their testimony, will largely exceed 425,000 dollars.

In view of all the facts and what may be reasonably expected as the result of a Commission, the Undersigned submits that a prompt and final settlement of the vexatious controversy by an appropriation of the lump sum agreed upon is advisable.

Respectfully submitted.

Department of State, Washington,
December 20, 1894.

(Signed) W. Q. GRESHAM.

No. 30.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received February 26.*)

(Telegraphic.) *Washington, February 26, 1895.*

BEHRING SEA: Lump sum.

The House of Representatives, by an adverse vote of 143 against 112, rejected the proposed appropriation for the payment of the lump sum agreed on.

In Committee of the whole House, it had previously been adopted by a vote of 94 to 86.

No. 31.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, February 27, 1895.*

IN your telegram of yesterday's date you reported the rejection by the House of Representatives of the appropriation of a lump sum of 425,000 dollars in settlement of the Behring Sea claims.

Has this settlement been definitively rejected, or will it be revived in some other form?

No. 32.

Colonial Office to Foreign Office.—(*Received March* 1.)

Sir, *Downing Street, February* 28, 1895.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letter of the 26th instant,* reporting that the House of Representatives in the United States had rejected the vote for 425,000 dollars in settlement of the Behring Sea claims.

I am to request that you will inform the Earl of Kimberley that Lord Ripon has received this intelligence with much regret, as he had hoped that an end of this controversy had been reached.

It will now be necessary to resume at once the negotiation of the Convention, and as Congress will rise at an early date, and the ratification of the Convention, if not concluded at once, will be postponed for another year, he would suggest that Her Majesty's Ambassador at Washington should be instructed to resume without delay the discussion of that instrument; and Lord Ripon proposes, if Lord Kimberley concurs, to telegraph to the Dominion Government to send some one at once to Washington to assist in the negotiation.

I am, &c.
(Signed) EDWARD FAIRFIELD.

No. 33.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, March* 1, 1895.

I HAVE received your Excellency's telegram of the 28th ultimo on the subject of the Behring Sea claims.

You should ask Mr. Gresham whether he will at once resume negotiations for a Convention.

Lord Ripon suggests that the Government of Canada should send a Delegate to assist at Washington.

You should strongly urge the necessity of settling the question at once, either by the payment of the lump sum or by a Convention for a Claims Commission.

No. 34.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received March* 3.)

(Telegraphic.) *Washington, March* 2, 1895.

BEHRING SEA claims: your Lordship's telegram of the 1st.

The Secretary of State informed me that he is quite prepared immediately to resume negotiations for a Convention. Present Session of Congress, however, closes on the 4th instant, and the Convention, when signed, must be submitted for confirmation by a two-thirds majority in the Senate. It cannot, therefore, be submitted to the Senate, unless a special Session be called before next December.

I have urged in the strongest language the necessity of a prompt settlement of the claims one way or another, and every effort to effect it has been vainly exhausted by the President and Mr. Gresham. They have even failed in an attempt to obtain from Congress an appropriation for the payment of the claims subject to their examination by a Commission to be appointed for that purpose, or for the simple expenses of such a Commission.

I received from Mr. Gresham to-day an expression of the deep regret felt by the President and himself at the unexpected situation in which they found themselves placed, and at their inability to prevent the delay which now, most unfortunately, must occur in adjusting these claims and discharging the national obligations of the United States.

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* Forwarding copy of No. 30.

No. 35.

The Earl of Kimberley to Sir J. Pauncefote.

Sir, *Foreign Office, March 6, 1895.*

AT an interview to-day with Mr. Bayard, I expressed to his Excellency the great regret with which Her Majesty's Government had learnt that Congress had separated without voting the sum for the Behring Sea claims, or making any provision for a Commission to examine them.

I feared that not only would this failure to execute the Award cause much dissatisfaction here and in Canada, but that it would tend to diminish confidence in the principle of arbitration.

It was the more unfortunate, because it was coincident with the proposal made by the United States' Government to reopen the whole matter which had so recently been settled by the Arbitration.

Mr. Bayard said he shared my regret at the failure of Congress to provide for the payment of the British claims, but that he was certain that the President and Mr. Gresham had done their utmost to induce Congress to vote the money.

I assured his Excellency that Her Majesty's Government had no complaint to make of the action of the President or Mr. Gresham, and I informed him of the purport of your Excellency's telegram of the 3rd instant on this subject.

I am, &c.
(Signed) KIMBERLEY.

No. 36.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received March 7.*)

My Lord, *Washington, February 26, 1895.*

WITH reference to my telegram of to-day's date, I have the honour to inclose herewith extract from the "Congressional Record," containing an account of the rejection of the proposed appropriation of 425,000 dollars to pay damages arising out of seizures in Behring Sea.

The proposal, after a two hours' debate, was approved in Committee of the whole House by a vote of 98 to 86, but on a subsequent vote, when the amendment was reported, the House rejected it by a majority of 142 to 113.

I have the honour to append a précis of the debate prepared in this Embassy.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 36.

Extract from the "Congressional Record" of February 25, 1895.

[Not printed.]

Inclosure 2 in No. 36.

Précis of Debate in House of Representatives, February 25, 1895.

THE House being in Committee of the whole for the consideration of the General Deficiency Bill:—

Mr. Breckenridge moved an amendment, providing for the payment of 425,000 dollars to Great Britain in full satisfaction of all demands for damages growing out of the controversy between the two Governments as to the fur-seals in Behring Sea.

There was no question, he said, that under the decision of the Arbitrators the United States should pay something. It was objected that the amount agreed on was excessive, in view of the fact that the claims were in part based on consequential

damages, which, in the case of the "Alabama," were not admitted. But there was a clear difference between the cases. In the case of the "Alabama" the wrong was the indirect act of the Government, and in the present case it was the direct act. And, further, in the present case, a rule was agreed on which allowed consequential damages. Judgment had been given against the United States, and the only question left was the assessment of damages. Leaving out the consequential damages, there would remain a claim, practically undisputed, for 227,000 dollars, on which interest would have to be paid for seven years, if the matter was referred to a Commission, and, in addition, there would be the expense of having Arbitrators. The bargain was not a bad one, and, on broader grounds, it did not become the United States to go down to the tavern and denounce the Judge, as litigants sometimes do who have lost their case. The right course was to settle the matter at once, and remove it as a cause of disagreement between the two peoples.

Mr. Cannon (Republican) was not opposed to the payment unless it reversed a principle already settled. The Arbitrators only decided the question of fact as to seizure and warning out; the question of the amount of damage and the ownership of the vessels was left open for future negotiation. As to prospective damages, it had been decided in the case of the "Alabama" that they could not properly be made subject of compensation. As to the question of ownership, it was clear from the evidence (Mr. Foster's statement published in the last Senate Document, p. 164) that the great majority of the vessels seized were owned by Americans. The most that could fairly be conceded was 103,000 dollars.

Mr. Hooker (Democrat) denied that the analogy with the "Alabama" case held good. The vessels were equipped in Canadian waters for the purpose of prosecuting what was now conceded by both parties to have been a lawful act, and the United States was responsible for whatever damages ensued from their seizure. It was not improbable that if the matter were referred to a Commission, the United States would have to pay a million dollars instead of less than half that sum.

Mr. Henderson (Republican) quoted from Mr. Foster's statement, and asked how in the face of it the Secretary of State could have made such an agreement. This large sum should not be paid when there was high authority for the statement that most of the claims were unwarranted and unjust. He advocated the Commission provided for in the Treaty, in order that if there were any Americans masquerading under British auspices they might be smoked out.

Mr. McCreary (Democrat) said that of the two alternatives he thought the payment of a lump sum would be the most economical, and that promptness in paying the claims was in the line of economy, justice, and honour.

Mr. Hitt (Republican) said that in the case of ten out of the twenty ships seized the real owners were Americans. These men were not engaged in a "lawful occupation," but one forbidden by the laws of their own country. They were entitled to fine and imprisonment, not to compensation. He quoted the case of Boscowitz, an American, who lent money to a Canadian, named Warren, on the security of certain ships; foreclosed, and then sold the ships, which thus passed into his hands, to a Canadian, named Cooper, for the sum of 1 dollar. This man Cooper now appeared among the claimants for the sum of 225,000 dollars for the seizure of ships which really belonged to Boscowitz. Cooper had testified that he did not even know the number or names of the ships, and that he had nothing to do with them. Of the total amount of 542,000 dollars claimed, 360,000 dollars represented the interests of Americans. As to the character of the claims, the great mass was for an estimated catch—377,000 dollars out of 542,000 dollars. It had been decided at Geneva that compensation was not to be paid for prospective earnings. As to the argument that the two Governments had agreed to pay compensation for such losses, it referred only to the claim for damages under the *modus vivendi*. That portion of the claim had been formerly abandoned by the two Governments. As to the fear expressed that more claims would be presented in case of the appointment of a Commission, it was clear from the words of the British Ambassador that the claims presented in June 1894 included all the claims. A Commission, as proposed by Sir Julian Pauncefote, would probably cost about 15,000 dollars, and would result, perhaps, in the payment by the United States of 50,000 dollars which is about what was due.

Mr. Dingley (Republican) would not say with certainty that the claim for prospective damages would be disallowed by the Commission. He quoted the case of the Halifax Award. It was a case of a choice of two evils, and it was impossible to foresee what would be the decision of a foreign Umpire.

Mr. Breckenridge, in reply, said that he agreed with the last speaker. The claims

would grow enormously if the payment was put off, and an immediate settlement was preferable.

Mr Livingston asked if Congress would not have the supervision of the payments made under the decision of the Commission?

Mr Breckenridge said that, if Congress refused to make the payment prescribed by a legally-constituted Tribunal, it would be a delinquent at the international bar of public honesty and universal integrity. It was not true that Sir Julian Pauncefote had debarred himself from presenting additional claims. Take the case of a man who had died from the effects of imprisonment.

Mr. Hitt denied that that claim could go before the Commission.

Mr. Breckenridge maintained that it could. He pointed out that these ships had sailed from a British port under the British flag, and the burden was on the United States to overthrow the presumption arising from that fact. He predicted that this could never be accomplished. The United States had gone into the Arbitration on the ground that the Behring Sea was United States' property, and had lost. They ought now to take the consequences like men. As to the damages claimed, he thought that the prospective catch ought to be paid for. The real capital of these men was their sweat, their risk, their danger, their time. When they were seized, and put in Alaskan prisons, without right and without justice, what better criterion of damage was there than what they might have caught, and what every one but themselves did catch during that year? These were not remote damages. There was a vast difference between remote damages and consequential damages. There are innumerable cases where consequential damages are given where they are the immediate and not the remote consequences of the act. He quoted the statement of Sir E. Grey in Parliament as to the probable payment of the damages, and hoped that the United States would not be posted before the world like a delinquent at a club. He did not advocate this measure because it had been proposed by a Democratic President, but because on the floor of the House of Representatives he represented the entire Imperial Republic of America, and he did not wish the United States to stand before the nations as a nation which did not keep faith.

He appended to his speech, as printed, a calculation showing under several hypotheses the saving to the United States effected by the payment of a lump sum.

On a division, there were, for the amendment 94, against 86.

The Committee rose, and the House then voted on the Appropriation Bill as passed by the Committee.

A separate vote was taken on the Behring Sea clause, when it appeared that there were—Yeas 113, Nays 142.

The majority comprised Republicans, Populists, and 48 Democrats.

No. 37.

Colonial Office to Foreign Office.—(*Received March* 9.)

Sir, *Downing Street, March* 8, 1895.

I AM directed by the Marquess of Ripon to acknowledge the receipt of your letters inclosing telegraphic correspondence with Her Majesty's Ambassador at Washington regarding the settlement of the Behring Sea claims, and I am to suggest, for the consideration of the Earl of Kimberley, that Sir Julian Pauncefote should be at once instructed to communicate a copy of his telegram of the 2nd instant to the Governor-General of Canada, and consult with him as to the date on which it will be convenient to send a Canadian Representative to assist in the further negotiations for a Convention.

I am, &c.

(For Under-Secretary of State),

(Signed) R. P. EBDEN.

No. 38.

The Earl of Kimberley to Sir J. Pauncefote.

(Telegraphic.) *Foreign Office, March* 9, 1895.

BEHRING SEA claims.

You should communicate your telegram of the 2nd instant to the Government of Canada.

The Secretary of State for the Colonies suggests that you should arrange with Lord Aberdeen as to the date when the Canadian Delegate who is to assist in the negotiations for the Convention should be sent to Washington.

No. 39.

Sir J. Pauncefote to the Earl of Kimberley.—(Received March 11.)

My Lord, *Washington, February* 28, 1895.

IN my despatch of the 26th instant I had the honour to report the adverse vote of the House of Representatives on the proposal to appropriate the sum of 425,000 dollars to the payment of the Behring Sea claims, in accordance with the Agreement concluded between the two Governments in August last.

The Committee of the whole House had voted for the appropriation by a small majority, and the adverse majority subsequently obtained on what is termed a "yea and nay" vote was a surprise, as well as a grave disappointment.

Strong party feeling would seem alone to account for the rejection of so just and desirable an arrangement, and, as your Lordship will have noticed from the inclosures in my despatch, statements have been made in Congress which are entirely misleading both as to the law and the facts of the case.

It is urged that the present claims are principally made out of "indirect" damages, because they include, in some cases, the loss of profits of the fishery season by sealing vessels warned out of Behring Sea.

Such damages were allowed when claimed by the United States in the Fortune Bay case on behalf of United States' fishermen, whose rights of fishery had been forcibly interfered with by a mob on the coast of Newfoundland in 1878.

Again, it is pretended that a great majority of the sealing-vessels on behalf of which the claims are made were the property of United States' citizens, whereas there is no evidence whatever of any change of ownership in those vessels, which all carried the British flag and a British register.

One speaker represented the total amount of the claims to be only 542,000 dollars, whereas it was over 700,000 dollars. Another concluded from the fact that the offer of the lump sum and its acceptance appeared in notes of the same date, that the offer was made without previous investigation, and was instantly "snapped at" by Her Majesty's Government, whereas the compromise recorded in those notes was the result of laborious negotiations, which were carried on during the whole summer.

There can be no doubt that the above inaccuracies were calculated to prejudice the minds of many Members of Congress, and also to turn public opinion against a settlement of the question which was both equitable and advantageous to both parties.

The action of Congress is in strange contrast with the assurance given me by Mr. Blaine at the commencement of the negotiations which led to the Behring Sea Arbitration, and is recorded in my despatch of the 1st November, 1889, "that his Government would not wish that private individuals who had acted *bonâ fide* in the belief that they were exercising their lawful rights should be the victims of a grave dispute between two great countries, which had happily been adjusted."

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

No. 40.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received March* 14.)

My Lord, *Washington, March* 4, 1895.

I HAVE the honour to transmit to your Lordship herewith extract from the "Congressional Record," containing a report of a Resolution introduced by Senator Morgan for the appointment of a Committee to examine into the question of the liability of the United States to pay claims arising out of the Behring Sea controversy, and also of the liability of Great Britain and Canada.

Your Lordship will observe that Senator Morgan alludes to a recent proposal made in the House of Commons to pay the claims in advance, as being made with a view to having "a moral claim on the United States for this 425,000 dollars, not one shilling of which is due."

Objection was interposed to the immediate consideration of the Resolution, and it accordingly went over.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure in No. 40.

Extract from the "Congressional Record" of March 1, 1895.

British Behring Sea Claims.

Mr. Morgan.—I offer a Resolution, for which I ask present consideration.

The Vice-President.—The Resolution will be read.

The Secretary read as follows:—

"*Resolved*,—That the Message of the President received by the Senate on the 13th February, 1895, relating to the payment by the United States of the claims of Great Britain arising out of the Behring Sea controversy, is referred to the Committee on Foreign Relations, with instruction that such Committee examine into the question of such liability to Great Britain and the amount thereof, if any, and of any liability on the part of Great Britain or Canada arising out of said controversy, and that said Committee shall have authority to report by Bill or otherwise; and, in making such examination, may sit in the vacation of the Senate."

The Vice-President.—Is there objection to the present consideration of the Resolution?

Mr. Sherman.—I wish to ask the Senator from Alabama whether it would be wise to pass this Resolution pending the controversy between the two Houses with respect to an appropriation of four hundred and some odd thousand dollars?

Mr. Morgan.—There is no such controversy.

Mr. Sherman.—I think that matter is now in conference between the two Houses.

Mr. Morgan.—No; I beg pardon. There is no report in either House in favour of any money to go to Great Britain, as the case now stands.

Mr. Hale.—Such an appropriation was stricken out in the House of Representatives.

Mr. Morgan.—Yes; that was stricken out.

Mr. Hale.—And the Senate Committee has not put it in; so it is not in conference.

Mr. Morgan.—There is no controversy. I wish to make this statement: The British Parliament seems to be acting upon this subject now by anticipation. I see by the morning papers that Sir George Baden-Powell says that he wants to pay to the Canadians and to the recalcitrant and rascally Americans who hired themselves out to the British flag to rob the Government of the United States and to violate its laws and dishonour the country, and to pay them in advance, so as to have a moral claim on the United States for this 425,000 dollars, not one shilling of which is due.

I propose that the Committee on Foreign Relations shall investigate that matter. There has been enough of falsehood and misrepresentation about that in official documents and in newspapers to require, for the vindication of the honour of this country, that that investigation should be made; it makes no difference what any Committee of this body may do.

Mr. Sherman.—I have no objection to the Resolution.

Mr. Turpie.—I should like to ask the Senator from Alabama whether the text of this Resolution does not propose a revision of the Behring Sea Arbitration.

Mr. Morgan.—Not by any means. It is merely to ascertain what are the obligations of the respective Governments under it.

Mr. Turpie.—It seems to me that the text of the Resolution, as I heard it read, proposes to review the proceedings of the International Arbitration.

Mr. Morgan.—Not at all. It is merely to ascertain what are the liabilities of the respective Governments under it.

Mr. Turpie.—The liabilities spoken of are certainly *res adjudicata*.

Mr. Morgan.—I quoted from the language of the President of the United States in sending his Message to the Senate.

Mr. Turpie.—I ask that the Resolution be printed and go over.

The Vice-President.—Objection being interposed, the Resolution will go over and be printed.

No. 41.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received March* 14.)

My Lord, *Washington, March* 5, 1895.

WITH reference to my despatch of the 4th instant, I have the honour to inclose extract from the "Congressional Record," containing a report of a debate in the Senate relative to the Resolution introduced by Mr. Morgan for the appointment of a Commission to examine the question of the liability of the United States and Great Britain to pay claims arising out of the Behring Sea controversy.

Mr. Morgan supported the Resolution in a speech in which he severely criticized the policy pursued by Great Britain. Objection, however, being interposed, the Resolution failed to pass. An abstract of the debate is inclosed herewith.

I have, &c.

(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 41.

Extract from the "Congressional Record" of March 2, 1895.

[Not printed.]

Inclosure 2 in No. 41.

Report of Debate in Senate, March 2, 1895.

Mr. Morgan, in introducing his Resolution for the appointment of a Committee to investigate the liability of the United States and Great Britain to pay claims arising out of the Behring Sea dispute, said that the question of the liability of the United States to pay damages was withdrawn from the consideration of the Arbitrators and reserved for negotiation. The Secretary of State had made an arrangement to pay a lump sum in order to avoid negotiation. If the matter had come before the Tribunal, Great Britain could not have recovered one cent. On the strongest point of the claim there could not be due to her more than 96,000 dollars; 173,000 dollars had been claimed for three ships which were valued by appraisers at 12,000 dollars. He wished the whole question to be investigated by a set of Commissioners "who may not perhaps have an embarrassment in a negotiation." It was not the fault of the Award Regulations that the seal herds were being depleted. The Supplementary Regulations of the Secretary of the Treasury were to blame which allowed the sealers to pass through forbidden waters during the close season. Where were the records of the time and place of the catch made by the sealers which were prescribed by the Award?

Great Britain had pledged herself to do her best to save the seals. But she had only sent one ship which had passed the entire summer outside of Behring Sea in port. The United States had sent ten. The administration of the law on the part of the

United States had been slack, and on the part of Great Britain absurdly inefficient. No evidence was presented upon which Great Britain could be held responsible for the conduct of her sealers. The Secretary of the Treasury had stated that he had papers in his possession which he had not communicated to the Senate. The whole matter was under a cloud of uncertainty, and therefore he proposed that there should be a fair and impartial but thorough investigation.

Mr. Gray objected to the consideration of the motion. Mr. Morgan had himself objected to the consideration of a Bill providing for an International Commission or Inquiry, because he thought that it implied a reflection on the Award Regulations. No such reflection was implied. The Senator himself, as an Arbitrator, had signed a recommendation that the herd should be allowed a rest of three years. There was not a particle of evidence to show lax administration of the law. The slaughter had taken place in the open season. Only one seizure had been made, and that ship was released. As to the lump sum, the settlement had been received with almost universal favour by the Senate Committee on Foreign Relations. It was far within the estimates made by the British claimants, and the best estimates that could be made by the Agents of the United States. That was out of the question now, and the Senate had had the opportunity to provide for the only alternative, that is, a Convention between the United States and Great Britain under which the claims could be adjudicated and the amounts determined. That had been refused. Now the Senator had prevented the Senate considering a proposal for preventing the destruction of the seal herd by a temporary cessation of the slaughter. The responsibility was not a light one. In conclusion, he would say that there was not the slightest ground for the imputation that the Secretary of the Treasury had suppressed the logs of vessels or any other evidence, as a perusal of the letter quoted by the Senator would show.

Mr. Morgan asked leave to print a statement showing what were the actual liabilities of the United States under the principles contended for by Great Britain.

Objection was made.

Mr. Gray asked leave to print as part of his remarks the letter of the Secretary of the Treasury referred to.

Mr. Morgan objected.

P.S.—The letter in question states that the Collector of Customs at San Francisco had reported that the masters of certain vessels had failed to give the required particulars, having sailed in ignorance of the Regulation concerning logs.

No. 42.

Sir J. Pauncefote to the Earl of Kimberley.—(Received March 25.)

My Lord,

Washington, March 15, 1895.

IN my despatch of the 5th instant I had the honour to transmit to your Lordship a report of a debate in the Senate on the subject of the Behring Sea claims, in the course of which Senator Morgan stated that he had prepared a Memorandum on the liability of the United States, under the Award of the Paris Tribunal, to make compensation for the illegal seizure of British sealing-vessels in Behring Sea.

He requested leave to print this document in the "Record" as part of his speech, but leave was refused.

After the adjournment of Congress he communicated this Memorandum to the press, and I have now the honour to transmit to your Lordship an extract from the "New York Daily Tribune," which purports to contain a summary of it.

Senator Morgan argues that the United States never agreed to arbitrate the question of their liability for damages, nor have ever admitted their liability. They only agreed to negotiate respecting it, expressly reserving the question of such liability as the subject of such negotiation. He is therefore opposed to the creation by Act of Congress of a Commission to settle the question without any negotiation. The claim of Great Britain is, he states, based on the false assumption that the United States were bound by the Award of the Tribunal, or by agreement, or by law, justice, or equity to pay any part of the demand.

Senator Morgan also insists that the "further negotiations" provided for in regard to these claims by Article VIII of the Behring Sea Arbitration Treaty should take place "through the constitutional authorities of the United States."

On those two points I would observe that no admission of liability became neces-

sary from the moment that the Paris Tribunal, by its Award, had rejected the legal pretensions of the United States to a special property in the fur seals resorting to the Pribyloff Islands. That decision at once proclaimed the illegality of the seizures, and the liability of the United States to satisfy the claims. That was the basis of the diplomatic negotiation for the adjustment of the claims, and I am at a loss to conceive what other view could be taken without disputing the Paris Award. Nor can I comprehend, without further explanation, the meaning of Senator Morgan's objection to that negotiation as not having taken place "through the constitutional authorities of the United States."

Having denied the liability of the United States to pay compensation, and also the competency of the United States' Secretary of State and of the British Ambassador to negotiate on the subject, though fully empowered by their respective Governments to do so, Senator Morgan proceeds to criticize the arrangement arrived at for the payment of a "lump sum" of 425,000 dollars.

With regard to the details of the claims, he states that the total amount claimed by Great Britain, with interest, is 542,169 dollars. He urges that the items for loss of profits should not be allowed, and he quotes in support of his contention the decision of the Geneva Arbitrators on the subject of prospective earnings. He estimates the excess proposed to be allowed by the Secretary of State as fully 182,000 dollars. He states, further, that ten of the ships for which damages are claimed were, in fact, owned by citizens of the United States, and that the amount claimed by British subjects, less speculative damages, is only 70,924 dollars.

But even this amount is, he states, excessive. He maintains that the "personal claims" should be deducted, leaving 36,289 dollars. Of this sum, 16,500 dollars, he says, is claimed for the "Henrietta," which claim is not allowable, as she was seized under the *modus vivendi*.

Senator Morgan's estimate, therefore, with the last-mentioned deductions, would reduce the indemnity to about 20,000 dollars; but that is an improvement on the previous estimate he gave in a recent speech in opposition to the payment of the claims, in which he declared that "not one shilling" was due (see my despatch of the 4th instant).

I will now proceed to show in what respects the distinguished Senator appears to have been misled in his computation of the indemnity.

In the first place, he is mistaken in supposing that the total amount of the claims, with interest, was only 542,169 dollars.

It amounted to upwards of 786,000 dollars, as your Lordship will see from the synopsis of the claims which forms Inclosure 2 to this despatch.

The Senator would seem to have taken the total given at p. 143 of the Congressional Papers on the subject as including interest, but that is not the fact.

Moreover, the case of the "Winnifred" was subsequently added, in order that the whole of the claims arising out of the Behring Sea controversy might be disposed of under the "lump sum" arrangement.

The next misapprehension to which I would call attention relates to the measure of damages.

Senator Morgan takes exception to the inclusion in the statements of claims of the items for loss of profits of the fishery season.

He would allow no compensation whatever for such losses, and he quotes from the Judgment of the Tribunal in the Geneva Arbitration the well-known passage, to the effect that no compensation can be awarded under the head of "prospective earnings," as they depend "upon future and uncertain contingencies." But he omits to mention that the Tribunal did, in fact, take such losses into consideration in awarding a gross sum by way of indemnity.

The Tribunal allowed a large amount "in lieu of profits." This is shown by the estimate of damages contained in Protocol No. 29 of the Geneva Conferences, in which the decision to award the gross sum of 15,500,000 dollars is recorded.

In all similar cases "losses of profits" are properly claimed, for although they may not be recoverable "under that head," they form an element of consideration, according to the circumstances of each case, in computing the award of a gross sum by way of indemnity. That was the view on which the United States' Government acted in 1879, when they preferred a claim of 120,000 dollars against Great Britain on behalf of twenty-two American fishing-vessels whose fishery operations had been interfered with by mob violence at Fortune Bay, in Newfoundland.

Those claims included damages for loss of profits, calculated on the average of preceding years. Sir Edward Thornton, then Her Majesty's Representative at Washington, objected "that these losses were in the nature of consequential or indirect

damages, which should not be allowed." But it was insisted, on behalf of the United States' Government, that compensation should be paid for those losses, and ultimately Her Majesty's Government awarded a "lump sum," amounting to two-thirds of the original claim, thus allowing a large margin for inflated valuations and doubtful items.

In the present case the lump sum of 425,000 dollars, agreed on between the two Governments, allows a still larger margin, for, if the same proportion of two-thirds had been adopted, the lump sum of 425,000 dollars would have been increased by 100,000 dollars.

The amount of indemnity originally claimed was reduced by no less than 360,000 dollars.

The next objection made by Senator Morgan is to the "personal claims," but he gives no reason for that objection.

It happens, however, that the damages claimed under that head were extremely moderate, having regard to the character of the acts for which redress is sought, and to the humiliation, losses, and sufferings inflicted on innocent persons in pursuit of their lawful industry.

Senator Morgan concludes by objecting to the claim of the "Henrietta," on the ground that she was seized under the *modus vivendi*. But the ground of claim is that she was not handed over after seizure to the British authorities, as prescribed by the *modus vivendi*, and was detained at Sitka until she became valueless from deterioration.

But of all the unfounded objections which have been urged against the claims, that which seems to have made the greatest impression on the public mind is the statement that most of the vessels on behalf of which the claims are made were in fact owned by persons whom Senator Morgan stigmatized in the Senate as "recalcitrant and rascally Americans, who hired themselves out to the British flag to rob the Government of the United States, and to violate its laws and dishonour the country." (See my despatch of the 4th instant.)

These vituperative epithets are quite unmerited, and I will proceed to show that the objection in question is not well founded in fact, and apparently is based on a mistaken view of the British navigation laws.

By British law no alien can hold any share in a registered British vessel, under penalty of forfeiture of the vessel to the Crown.

The owner of the vessel may mortgage her to an alien, but he does not thereby part with his property in the vessel. He only makes her a security for the loan.

Section 70 of the Merchant Shipping Act provides as follows:—

"A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be the owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt."

It is not improbable that in some cases the owners of British sealing-vessels may have borrowed money from United States' citizens for the purpose of the season's equipment and venture, and that they may have mortgaged their vessels to American citizens as collateral security for the loan.

But they remain liable to the lender for the amount of the loan, though their vessel has been illegally seized and their venture has resulted in a loss, owing to such illegal seizure. On what conceivable ground of justice or reason are they to be deprived of compensation because part of the amount awarded may be applied by them in satisfaction of a loan due by them to an American citizen?

Why should that American citizen be called "a rascal"? What law has he violated by advancing money for the prosecution of a lawful Canadian industry carried on by Canadians in Canadian vessels? In what respect has the United States' Government been "robbed," considering that it has no property in the fur-seal, as was solemnly adjudged and declared by the Tribunal of Arbitration at Paris?

These are questions which, I submit, can only be reasonably answered in a sense absolutely fatal to Senator Morgan's contentions.

Moreover, the principal alleged transgressor referred to, whose name is Boscowitz, has denied that he is an American citizen.

The British flag and the law of nations have been violated on the high seas, and it appears to me that in assessing the indemnity to the private individuals who were the victims of the great wrong so committed, any inquiry into the sources of the capital invested in the lawful industry pursued by the vessel at the time of seizure is out of place and inadmissible.

As regards the vessels themselves, even if some of them, as contended by Senator Morgan, were owned or partly owned by citizens of the United States (which I have shown could not be the case under the law of the flag), such vessels became liable to

be forfeited to the British Crown, and the United States' Government, by whom they were wrongfully seized, would be bound to restore them or their value to Her Majesty's Government for the purposes of such forfeiture.

It will be seen from the above explanations that Senator Morgan's objections to the payment of the "lump sum" agreed upon are based in a great measure on misapprehensions of fact, and, I would add with all respect, on an erroneous view of the rights of Great Britain and of the obligations of the United States resulting from the Behring Sea Treaty of Arbitration and the Paris Award.

As your Lordship is aware, Senator Morgan is the Chairman of the Senate Committee on Foreign Relations, and was one of the two members representing the United States' Government on the Behring Sea Tribunal of Arbitration.

It is not surprising that persistent denunciations from such a quarter against the diplomatic arrangement concluded between the two Governments should have prejudiced Congress and the public against it. Moreover, the great pressure of business and the strong party feeling which marked the close of the Session rendered it impossible to obtain a fair and dispassionate consideration of the question.

Much as the delay in the final settlement is to be deplored, I have too much confidence in the great qualities of the American people to doubt that it will be ultimately adjusted on a sound and honourable basis.

In a previous despatch I reminded your Lordship of the assurance given to me by Mr. Blaine at the commencement of the negotiations which led to the Paris Arbitration, "that his Government would not wish that private individuals who had acted *bonâ fide* in the belief that they were exercising their lawful rights should be the victims of a grave dispute between two great countries which had happily been adjusted."

The President and the Secretary of State adopted the same view and were animated throughout the negotiations for the settlement of the claims by the highest sentiments of honour and justice. I am not without hope that when the cloud which now obscures the true merits of the case has been dispelled, Congress may yet confirm the arrangement made between the two Governments as an equitable and happy solution of a tedious and irritating controversy.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

Inclosure 1 in No. 42.

Extract from the "New York Tribune" of March 9, 1895.

(By telegraph to the "Tribune.")

Washington, March 8, 1895.

CHAIRMAN Morgan, of the Senate Committee on Foreign Relations, was a member of the Behring Sea Tribunal of Arbitration, and there is no man living who possesses a more thorough and accurate knowledge of the matters discussed or the conclusions and awards of the Tribunal than he does. It is by no means singular that he should denounce the claims of alleged British subjects on account of damages as "preposterous," in view of the facts which have already been disclosed in the debate in the House of Representatives, as well as in these despatches. But it is exceedingly significant, to say the least, that Senator Morgan, a Democrat, should in effect declare that this Administration, and not the Paris Tribunal, is responsible for the slaughter of the seals by poachers during the last two years.

Senator Morgan's statement, which is herewith reproduced, strongly suggests either that the Cleveland Administration was hoodwinked by the Representatives of Great Britain, whose construction of the decision of the Tribunal of Arbitration was accepted by it, or that it was willing to sacrifice whatever advantage the United States might have gained under that decision for the sake of casting discredit upon the Administration which agreed to submit the matters in controversy to such a Tribunal. The statement of Senator Morgan's views is as follows:—

"A very mistaken view of this matter is entertained. The Treaty of Arbitration was signed the 29th February, 1892, and the *modus vivendi* of 1892 was signed on the 18th April of that year. They were ratified by the Senate as parts of the same Treaty, and were proclaimed by the President on the same day, the 9th May, 1892. Article VIII of the Treaty of February 1892 says that the High Contracting Parties, having found them-

selves unable to agree upon a reference which shall include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented or made by it, and being solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main question, do agree that either may submit to the Arbitrators any question of fact involved in such claim, and ask for a finding thereon, the question of the liability of either Government upon the facts found to be the subject of further negotiations. Article V of the Treaty of April 1892 stipulates that if the result of the Arbitration be to affirm the right of British sealers to take seals in Behring Sea within the bounds claimed by the United States, then compensation shall be made for abstaining from the exercise of that right during the pendency of the Arbitration upon the basis of such a regulated and limited catch as in the opinion of the Arbitrators might have been taken without an undue diminution of the seal herd. If the result of the Arbitration denied the British rights, then compensation was to be made by Great Britain to the United States. The amount awarded, if any, was to be promptly paid.

"It was not questioned and could not be disputed that the two Treaties, though they were signed at different times, constituted one entire Agreement. Article VIII of the Treaty of February 1892 only bound the two Governments to a 'further negotiation' as to the matters therein referred to, and left 'the question of the liability of either Government on the facts found to be the subject of further negotiation.' In execution of this Article, the Agents of the two Governments agreed upon a state of facts which the Tribunal found to be true and entered it of record. That statement of facts included only the names of twenty sealing-vessels that were seized by the United States. The Tribunal had no authority to pass upon any question touching the liability of the United States for having made such seizures. That matter was left where Article VIII of the Treaty left it. The United States has not agreed to arbitrate any such claim or demand, and have never admitted any liability to Great Britain connected with any such claim or demand. They have only agreed to negotiate respecting it, expressly reserving the question of such liability as the subject of such negotiation.

"I am only insisting that the negotiations shall take place through the constitutional authorities of the United States, and that it shall not be evaded by a scheme to create by Act of Congress a Commission that will settle the question without any negotiation. Judge Blodgett, one of the Counsel of the United States, presented an argument before the Tribunal to show that upon the widest basis of demand Great Britain had claimed, no decree upon the facts could award Great Britain any damages for alleged wrongs committed by the United States. That argument was not answered, nor was any effort made to answer. It stands to-day as a perfect answer to the claim set up by Great Britain, based upon the false assumption that the United States were bound by the Award of the Tribunal of Arbitration, or by agreement, or by law, justice, or equity to pay any part of the demand."

Mr. Morgan then gave in detail the names of the vessels and the claims made on their behalf, which was the statement he desired to include in the record, but which was shut out by Mr. Turpie's objection. The claims showed that the amount claimed by Great Britain with interest was 542,169 dol. 26 c.; the amount proposed to be allowed by Secretary Gresham was 425,000 dollars. Mr. Morgan said that the schedule of claims for each vessel contained an item designated variously as "probable catch," "balance of catch," "estimated balance of catch," &c. These were clearly prospective profits or speculative damages, and were all based on future or contingent occurrences, forming no basis of fact on which an equitable finding as to amount of damages could be predicated. They should not be allowed. Similar claims were presented by the United States to the Arbitrators of the "Alabama" Claims in 1872 at Geneva, and in their decision they say: "And whereas prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies, the Tribunal is unanimously of the opinion that there is no ground for awarding to the United States any sum by way of indemnity under this head."

Mr. Morgan estimated that the excess proposed to be allowed by Secretary Gresham was fully 182,000 dollars. He added:—

"The above figures and comparisons are based entirely upon the supposition that every vessel included in the schedule of claims submitted by Sir Julian Pauncefote was owned by a British subject. It appears, however, from the United States' Counter-Case submitted to the Behring Sea Tribunal of Arbitration at Paris, that ten vessels were in fact owned by citizens of the United States."

He figured up the general result as follows:—

Total amount claimed by Great Britain, 542,169 dol. 42 c.; total amount of claims of

United States' citizens presented, 359,853 dol. 89 c.; balance resulting, being amount claimed by British owners, 182,315 dol. 53 c. But of this amount claimed by British subjects, speculative damages are included to the amount of 111,391 dollars, thus leaving the amount claimed by British subjects, less speculative damages, 70,924 dol. 53 c. The total amount of claims of British subjects, which, as Mr. Morgan contends, could possibly be recovered, amounts in all to 70,924 dollars. But even this sum, which is 471,244 dollars less than the British claim presented and 354,075 dollars less than the amount the Secretary of State proposes to give in settlement, is undoubtedly excessive. Of that amount, 34,636 dollars is for "personal claims," and in all probability some of these claimants are citizens of the United States or some other country, which fact could be established by investigation. Deducting the "personal claims" from 70,924 dollars, there is left, as Mr. Morgan says, 36,289 dollars. Of this sum, 16,560 dollars appears as the claim of the "Henrietta" (less speculative damages). The "Henrietta" was seized in Behring Sea in September 1892, under the provisions of the *modus vivendi*, and therefore no claim is allowable. But even if allowable it shows its "padded" character, from the fact that there is a claim for an "estimated catch" in Behring Sea when sealing was not allowed there, and the season was over at the time of the seizure.

Senator Morgan therefore concludes that Great Britain claims the sum of 542,169 dollars, and that the amount due, with interest, is only 96,102 dollars, making an excess in the claims without interest over the amount due with interest of 446,066 dollars. The Secretary of State proposed to allow 425,000 dollars, which is by this account, according to Senator Morgan's figures, 328,897 dollars in excess of the total amount due to British subjects with the interest computed.

"When the Government of the United States," said Mr. Morgan, in conclusion, "has made no Agreement and no admission of any indebtedness to Great Britain on account of any of these claims, and has not admitted any principle on which the claim of Great Britain is based, I must insist that these matters should be discussed in the negotiations that the two Governments are bound to conduct. I could not agree that speculative profits or damages or personal claims should be included in the accounts, unless that is in accordance with the laws of nations. Such a precedent would soon develop into the most bitter and violent contentions between nations.

"Under Article V of the *modus vivendi* of 1892 nothing was claimed by either party, and the Tribunal of Arbitration made no Award upon that Article. It was not proposed, and I, at least, understood that it was abandoned. I have said nothing about the causes that have led to the alleged increased destruction of seals in 1894. I do not credit those statements. I am thoroughly satisfied that if such increased destruction has occurred, or if the number of seals killed was not greatly reduced in 1894 below the number killed in 1891 and 1892, the slaughter is due to the inefficient regulations to carry out the concurrent regulations established in the Award of the Arbitrators."

Inclosure 2 in No. 42.

SYNOPSIS OF CLAIMS.

1886.

	Dol.	c.
Claims	99,400	37
Added claim of "Black Diamond"	7,500	00
	106,900	37
Interest at 7 per cent. to 1894 (8 years)	59,864	20
	166,764	57

1887.

Claims	205,098	11
Additional claim of "Ada"	3,000	00
	208,098	11
Interest at 7 per cent. to 1894 (7 years)	101,968	07
	310,066	18

1889.

Claims	132,663 00
Additional claim of "Juanita"	3,002 66
	135,665 66
Interest at 7 per cent. to 1894 (7 years)	47,482 98
	183,148 64

1890.

	Dol. c.
Claims	2,000 00
Interest at 7 per cent. to 1894 (4 years)	560 00
	2,560 00

1892.

"Henrietta"	26,658 00
Interest at 7 per cent. to 1894 (2 years)	3,732 12
	30,390 12

Résumé.

	Dol. c.
1886	166,764 57
1887	310,066 18
1889	183,148 64
1890	2,560 00
1892	30,390 12
	692,929 51
"Winnifred"	30,390 12
Costs of suit in *re* "W. P. Sayward"	62,847 12
Total	786,166 75

The claim of the "Winnifred," which occurred in 1891, is added, though the particulars were not furnished. It was agreed that it should be covered by the "lump sum," and as the case is similar to that of the "Henrietta," whose claim amounted to a little over 30,000 dollars, it was put down roughly at the same amount.

No. 43.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received March* 30.)

Washington, March 19, 1895.

My Lord,

IN my despatch of the 15th instant I had the honour to lay before your Lordship my views on the subject of the refusal by Congress to vote the appropriation of 425,000 dollars in satisfaction of the Behring Sea claims, and my observations on the objections raised by Senator Morgan to the "lump sum" arrangement. I venture to supplement that despatch with the following additional remarks on the Senator's statement that the United States' Government had never admitted their liability to pay those claims.

I observed in that despatch that the Award of the Paris Arbitration proclaimed the illegality of the seizures, and the liability of the United States to satisfy the claims. But, if any admission of liability were necessary, it is to be found, at least in principle, in Article 5 of the *modus vivendi* of 1892, which was signed contemporaneously with the Treaty of Arbitration.

Under the *modus vivendi* of 1891 the British sealers were compensated by their own Government for their loss of profits consequent on their abstention from pelagic sealing during that season.

Under the *modus vivendi* of 1892 (Article 5) it was provided that, if the result of the Arbitration should be to affirm the right of the British sealers to take seals in Behring Sea, similar compensation as therein defined should be paid to them by the United States' Government.

If the British sealers were thus held entitled to compensation for abstaining from the pursuit of their lawful industry under the above voluntary and amicable arrangement, how much greater is their claim to such compensation for the previous deprivation of their just rights by force and violence. The two Governments, at the arbitration, waived their respective claims to compensation under Article 5 of the *modus vivendi* of 1892, for reasons given in the report of the proceedings of the 31st May (pp. 1197–98). But those reasons in no way militate against my present contention; they rather confirm it.

It is true that, as stated in Article VIII of the Treaty of Arbitration, the High Contracting Parties found themselves unable to agree upon a reference which should include the question of their respective liabilities to each other.

But the reason was not that any dispute arose as to the liability of the United States' Government to pay compensation for the illegal seizures of British vessels in the event of the decision of the Arbitrators being adverse to them on the question of the jurisdictional rights of the United States. The sole reason for which the High Contracting Parties found themselves unable to agree on the question of liability was that the United States' Government claimed, in the event of the Award being in their favour, to render Great Britain liable for losses resulting from the wrongful action of persons sealing outside British jurisdiction under the British flag, a doctrine which it would be impossible for Her Majesty's Government to accept. (See Lord Salisbury's telegram of the 12th August, 1891.*)

I may add, in conclusion, that during the negotiations for the "lump sum" arrangement the Secretary of State entirely shared the views above expressed as to the significance of Article 5 of the *modus vivendi* of 1892 in relation to the measure of damages.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

No. 44.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received April* 17, 7 P.M.)

(Telegraphic.) *Washington, April* 17, 1895.

BEHRING SEA Claims Convention.

Canadian Government owing to meeting of Dominion Parliament to-morrow have decided to postpone resumption of negotiations and visit of their Delegates to Washington until after prorogation.

No. 45.

Sir J. Pauncefote to the Earl of Kimberley.—(*Received April* 25.)

My Lord, *Washington, April* 16, 1895.

WITH reference to the resumption of negotiations for the Behring Sea Claims Convention, and to the proposed visit of Canadian Delegates to Washington in connection therewith, I have the honour to report that, immediately on receipt of your Lordship's telegraphic instructions of the 9th ultimo, I communicated with the Governor-General of Canada as to the date of the visit of the Delegates.

On the 18th ultimo the Governor-General replied to the effect that the Canadian Government were most anxious for an early settlement of the Behring Sea claims, and that the Ministry were ready to send Representatives without delay.

On the 20th ultimo I informed the Governor-General of the readiness of the United States' Government to resume negotiations for a Treaty to be submitted to the Senate at the next meeting of Congress, but I added that the Secretary of State had not recovered from his recent illness, and that he had been advised to leave Washington for a short time. Nevertheless, Mr. Gresham would proceed at once, if desired, with the negotiations.

* See "United States No. 3 (1892)," No. 122.

I received no further communication from the Governor-General until the 5th instant, when his Excellency informed me, by telegram, that his Ministers suggested that the Conference should take place at once so as to enable the Delegates to return to Ottawa before the meeting of the Dominion Parliament, which would take place on the 18th instant.

Mr. Gresham was then absent from Washington, but I called on him immediately on his return, and I ascertained from him that while the President was quite willing that the negotiations should proceed at once, if such was the desire of the Canadian Government, still, in view of the short time now at the disposal of the Delegates before the meeting of Parliament, and of other considerations, he thought it would be of advantage to defer the negotiations to the later period.

I so informed the Governor-General, by telegram, on the 10th instant, and yesterday, the 15th, I received a reply from his Excellency, to the effect that, owing to the meeting of the Canadian Parliament on the 18th instant, the Dominion Government prefer to have the visit of their Delegates to Washington deferred until after the Session.

I have so informed Mr. Gresham.

I have, &c.
(Signed) JULIAN PAUNCEFOTE.

No. 46.

The Marquess of Salisbury to Sir J. Pauncefote.

Sir, *Foreign Office, August* 31, 1895.

YOUR Excellency's despatches of the 28th February last and of the 4th, 5th, 15th, and 19th March relative to the claims for compensation from the United States on account of the seizure of British sealing-vessels in Behring Sea were duly received, and have been read with careful attention.

I need scarcely say that the arguments which you bring forward in support of the validity of those claims have the entire approval and concurrence of Her Majesty's Government. The attempt made by Senator Morgan to dispute them seems to be largely founded on misapprehension, and Her Majesty's Government cannot doubt that when the full facts are before the public in the United States, the liability of that country to make compensation, which has never been denied by the Government, will be generally recognized both in and outside of Congress.

As your Excellency will shortly be returning to your post, I transmit to you herewith, for such use as you may find convenient, a Memorandum, setting out at somewhat greater length some of the points in support of the claims to which you have alluded in your despatches above referred to.

I am, &c.
(Signed) SALISBURY.

Inclosure in No. 46.

Memorandum.

THE statement communicated to the press by Senator Morgan entirely ignores the fact that the five questions submitted to the Arbitrators in accordance with Article VI of the Treaty of the 29th February, 1892, embodied the whole of the grounds urged on behalf of the United States' Government in justification of the seizures out of which the claims arise. This is abundantly clear, not only from the correspondence which led to the framing of these questions, but also from the proceedings of the Tribunal.

Mr. Blaine, in the course of his first conversation with Sir J. Pauncefote on the subject of the seal fisheries, as reported in the despatch to Lord Salisbury of the 1st November, 1889, stated:—

"As regards compensation, if an agreement should be arrived at, he felt sure that his Government would not wish that private individuals who had acted *bond fide* in the belief that they were exercising their lawful rights should be the victims of a grave dispute between two great countries, which had happily been adjusted. He

was not without hope, therefore, that the wishes I had expressed might be met, and that all might be arranged in a manner which should involve no humiliation on either side."

In a subsequent conversation on the subject of compensation on the 26th December, Sir J. Pauncefote reports Mr. Blaine to have stated that "on further consideration, he had decided to reply to my protest, in order to place on record before the world the precise grounds upon which the United States' Government justify the seizure of the Canadian vessels, so that any compensation which may be granted may not be interpreted as an admission of wrong."

These grounds of justification were accordingly set forth in Mr. Blaine's note to Sir J. Pauncefote of the 22nd January, 1890, and amplified and reiterated in his later notes of the 30th June and the 17th December in the same year. In the last of these notes he summed them up in the form of questions for arbitration, which were substantially the questions propounded to the Arbitrators, and decided by them against the United States.

Though, on the face of them, these questions do not refer to the question of damages, it is obvious that the Arbitrators, in deciding that the grounds upon which the United States based its claim to regulate the seal fisheries were unfounded, at the same time decided that the justification for the seizure of British vessels, which was based on these grounds, was unfounded.

The seizures were, in fact, formal acts of the United States' Government in the exercise of the rights and jurisdiction which they claimed, and the Tribunal, in declaring that they had no title to such rights and jurisdiction, necessarily declared that the loss and injury inflicted on British subjects, in pursuance of those rights and jurisdiction, were unwarranted, and as they also found that the seizures "were made by the authority of the United States' Government," their decision was a declaration that the United States' Government, having inflicted an unwarranted wrong, were liable to pay compensation for such wrong.

That this was the view of the Arbitrators and of those engaged in conducting the case on behalf of the United States' Government is clear from the proceedings of the Tribunal.

The 5th Article of the Finding of Facts submitted to the Tribunal by the United States' Agent as an alternative to the finding proposed by the British Agent, as reported at p. 1458 of the Proceedings, was "that the said several searches, seizures, condemnations, confiscations, fines, imprisonments, and orders were not made, imposed, or given under any claim or assertion of right or jurisdiction except such as is submitted to the decision of the Arbitrators in Article IV of the Treaty of Arbitration."

The findings finally proposed by the Agent of Great Britain, and agreed to as proved by the Agent for the United States, and submitted to the Tribunal for its consideration, and found by them unanimously (including Senator Morgan, therefore) to be true, were as follows:—

> "Finding of Facts proposed by the Agent of Great Britain, and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.
>
> "1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pp. 1 to 60 inclusive, were made by the authority of the United States' Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule to the British Case.
>
> "2. That the seizures aforesaid, with the exception of the 'Pathfinder,' seized at Neah Bay, were made in Behring Sea at the distances from shore mentioned in the Schedule annexed hereto, marked (C).
>
> "3. That the said several searches and seizures of vessels were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were made, from the Executive Department of the Government of

the United States, instructions, a copy of one of which is annexed hereto, marked (A), and that the others were, in all substantial respects, the same. That in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked (B), and that the libels in the other proceedings were in all substantial respects the same; that the alleged acts or offences for which said several searches and seizures were made were in each case done or committed in Behring Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States; and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Behring Sea at the distances from the shore aforesaid.

"4. That the several orders mentioned in the Schedule annexed hereto, and marked (C), warning vessels to leave or not to enter Behring Sea, were made by public armed vessels of the United States, the Commanders of which had, at the several times when they were given, like instructions as mentioned in Finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States.

"5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pp. 1 to 60 inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel."*

It will be observed from these findings that the question of justification was regarded as conclusively settled by the decision of the five questions, and that the only negotiations contemplated were "negotiations as to the liability of the United States' Government to pay the amounts mentioned in the Schedule (C) to the British Case," not simply negotiations as to the liability of the United States' Government to pay compensation at all; and, further, that the only reservations made on behalf of the United States' Government were "the questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States."

The eminent lawyers and statesmen charged with the conduct of the United States' Case certainly never contemplated that the decision of the Arbitrators would not be accepted as concluding the liability of the United States except in regard to the points expressly reserved in the Findings of Facts.

Mr. Morgan is alleged to have stated that the argument submitted to the Tribunal by Judge Blodgett, one of the United States' Counsel, "stands to-day as a perfect answer to the claim set up by Great Britain, based upon the false assumption that the United States were bound by the Award of the Tribunal of Arbitration, or by agreement, or by law, justice, or equity to pay any part of the demand." But on the very first page of that argument Mr. Blodgett says: "We, however, preface what we have to submit on this feature of the case by saying that, if it shall be held by this Tribunal that these seizures and interferences with British vessels were wrong and unjustifiable under the laws and principles applicable thereto, then it would not be becoming in our nation to contest those claims, so far as they are just and within the fair amount of the damages actually sustained by British subjects;" and the whole of his argument is in fact devoted to the two points reserved in the Findings of Fact, the amount of the claims, and the nationality of the claimants.

When the question was discussed during the oral argument before the Tribunal, the same view was clearly expressed by the United States' Counsel.

The following extract (pp. 778 to 780) from the report of the oral argument will show this, and furnishes an interesting commentary by the official Representatives of the United States' Government on the recent action of Congress:—

* These grounds were, "that the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States."

"*Mr. Justice Harlan.*—Suppose this Tribunal should decide under the points in Article VI that the United States had or had not any right of property in the seals, and had or had not any right to protect them on the high seas, you would consider the United States bound by that ruling when the two nations, if the occasion arose, got together in negotiations on the question of damages.

"*Mr. Phelps.*—I should, Sir, if you put that question to me at this time.

"*Mr. Justice Harlan.*—That is what I understand Lord Hannen's question to embrace.

"*Mr. Phelps.*—If that is the purport of the inquiry, yes. I do not suppose, for instance, that if this Tribunal should decide that the United States had no right of property and no right of protection, and that under the circumstances vessels were seized belonging to British subjects, I do not understand that it would be open to the United States after that to insist that there was a right of seizure and a right of protection, in the face of the decision of the Tribunal.

"*Lord Hannen.*—I am bound to say that, assuming that that may be taken as authoritative, it would meet my question.

"*The President.*—And in that case the liability spoken of in Article VIII would merely refer to the question of indemnity, and then there would be no disagreement.

"*Mr. Phelps.*—That question, as it seems to me, which was put by his Lordship, refers rather to the inference that the United States' Government would feel itself bound to draw, in respect of the seizure, from the decision of the points of law in respect to the other branches of the Case.

"*Lord Hannen.*—Yes. The object of my inquiry would be completely met if it can be taken as authoritative. We will assume for a moment that the finding would be no property. If that can be tacked on to the Finding of Facts as to the seizure, then that would meet that which Sir Charles has been asking for, a finding that it was an illegal seizure; and, if so, I presume that would satisfy his requirement, as undoubtedly it would meet the view which I intended to indicate in the question I put to you.

"*Mr. Phelps.*—Your Lordship will see that if you ask the opinion of the Counsel of the United States what would be the just and right course for the United States' Government to pursue in the future negotiations if such were the finding of the Tribunal, our answer might be one way. If you ask us if we are authorized here to bind the United States to any conclusion in future negotiations, we must answer that we have no such authority, and have no right to make a declaration that would bind them.

"*Lord Hannen.*—That is why I put in the word 'authoritative.'

"*Mr. Phelps.*—We are not authorized to make any such statement or to give any such assurance. I am free to say, and I believe that to be the view of my associates, that after a finding by the Tribunal upon the five questions involved, it would not seem to me becoming on the part of the United States, who have agreed to abide by this Award, to contradict the Award when the question of its propriety arose upon this subordinate matter of seizure; but it must be a question for those who control the diplomatic relations of our Government, and is not a question that we are authorized in reference to.

"*The President.*—That is all very well, Mr. Phelps; but we have here the United States before us in the persons of their Agent and Counsel, and we have the right to ask them what is the authoritative and official interpretation put by the United States upon one word used in an Article of a Treaty which limits our powers. We have the right to ask you, what is the interpretation put by the United States upon those words 'question of liability'?

"*Mr. Phelps.*—That question the Tribunal is quite entitled to put, and that question we are quite ready to answer. We have endeavoured to answer it; that in the discussion of questions under Article VIII the Tribunal is invested with no authority whatever except to find the facts, leaving the legal consequences of those facts, so far as these seizures are concerned, for future consideration.

"Then if the Tribunal goes further, and asks me what that future consideration on the part of the United States' Government would be, I reply in the first place that I have no doubt that it ought to regard the decision of the Tribunal as conclusive upon the questions arising under this Treaty, but that I am not authorized to go beyond this arbitration and the power with which the Tribunal is invested under this Article, and give an authoritative assurance as to what those in charge of the United States' Govern-

ment when that time comes may do. The distinction may be a refined one, but it is one that we feel compelled to make.

"*The President.*—We understand that very well. We merely wanted to know what was your interpretation of these words 'questions of liability.' We know the interpretation of the English Government.

"*Mr. Phelps.*—Our interpretation of that is, as I have said, that Article VIII simply provides for the finding of such facts—material facts, of course—as either party may desire to have found, and may offer sufficient evidence in support of. What consequences shall come from that finding is a point that it seems to us is not submitted to this Tribunal. It will be for the after consideration of the Government. But I should not seriously doubt, when you ask my opinion, when those points come to be considered hereafter by the United States' Government, that the decision of the Tribunal upon the first five questions will be respected there as elsewhere."

In his criticisms of the amount of the claims, Mr. Morgan is alleged to have stated: "The Schedule of Claims for each vessel contained an item designated variously as 'probable catch,' 'balance of catch,' 'estimated balance of catch,'" &c. These were clearly prospective profits or speculative damages, and were all based on future or contingent occurrences, forming no basis of fact on which an equitable finding as to amount of damages could be predicated. They should not be allowed. Similar claims were presented by the United States to the Arbitrators of the "Alabama" claims in 1872 at Geneva, and in their decision they say: "And whereas prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies, the Tribunal is unanimously of opinion that there is no ground for awarding to the United States any sum by way of indemnity under this head."

Mr. Morgan omits, however, to add that in the award of a gross sum to the United States the Arbitrators allowed in lieu of the claim for prospective catch one year's wages and 25 per cent. on the value of the vessels and their outfits. This is clear from the 29th Protocol of the Proceedings of the Tribunal, and is shown in detail in the statement inclosed in Lord Tenterden's despatch of the 9th September, 1872, setting forth how the gross Award of 15,500,000 dollars was arrived at. That statement, after setting forth the gross amount of the American claims, thus—

	Dollars.
Claims for losses by insurgent cruisers (including the new claims for wages, &c.)	14,437,143
Prospective catch, if allowed, an additional sum of	3,511,055
Claims for pursuit and capture	6,735,063
	24,683,061
With interest at 7 per cent., which, taken for 9 years, would amount to	15,550,464
Total	40,233,715

proceeds as follows:—

"The Tribunal disallowed the claims for pursuit and capture and for prospective catch.

"They further disallowed:—

	Dollars.
"The claims for gross freight	1,007,153
Double claims	1,682,243
And may further be assumed to have disregarded the new claims to the amount of	1,450,000
Making a further reduction from the American claim of 14,437,144 dollars of	4,139,396
And leaving a balance of	10,297,748
Taking a mean between this and the British estimate of 7,464,784 dollars, the result is	8,881,266
To this must be added two allowances made by the Tribunal:—	
In lieu of prospective catch, one year's wages, and 25 per cent. on the value of the vessels	988,000
In lieu of the claims for gross freight, 50 per cent. of the claims as net freight	503,576
Total	10,372,842
Which, with interest at 6 per cent. for about 8 years, gives a result of	15,500,000

"As actually arrived at by the Tribunal."

The claims in respect of which this "allowance in lieu of prospective catch" was made were on behalf of whalers, whose industry is still more speculative and uncertain than that of the sealers, and the observations of the British Arbitrator, Sir A. Cockburn, on that part of the Award form a striking contrast to the statements attributed to Senator Morgan. At p. 253 of the reasons for dissenting from the Award of the Tribunal of Arbitration, he says: "But, independently of the undeniably exaggerated amount of the claims, a demand for gross prospective earnings as distinguished from net earnings is quite incapable of being maintained. This is admitted in the argument of the United States, and is clearly demonstrated in the British Report. According to the decisions of the Supreme Court of the United States, the only allowance which ought to be made in respect of prospective catch is in the nature of interest from the time of the destruction of the vessel. I should myself be disposed to adopt a more liberal mode of compensation, and to award for prospective profits a reasonable percentage on the values of the vessels and outfits," &c.

The Fortune Bay claims to which Sir J. Pauncefote alludes in his despatch of the 28th February were almost entirely claims for prospective damages. Of the total amount of 103,000 dollars, claimed by the United States in that case, only 1,400 dollars was for actual destruction of property. (Report of Judge Bennett, p. 3 of C. 3762, 1883.) The American vessels were only interfered with on one day, yet they claimed for the whole season's profits, and the profit claim was based, not, as in the British Behring Sea claims, on the actual results of the season interrupted, but on the profits of previous years, though the season of 1878 was an exceptionally bad one (p. 2 of C. 3762 of 1883). The action which gave rise to the claims was not that of the British Government, but of a mob of fishermen in an outlying part of the Colony, enraged at seeing the laws to which they themselves were subject violated by their competitors. The American vessels claiming largely employed natives of Newfoundland in their vessels, and though these as British subjects were unquestionably amenable for violation of the laws of Newfoundland by fishing on Sunday, the British Government took no exception to the American claims on that ground.

But although the American claims were almost entirely for prospective damages, though they arose largely from the violation of British laws by British subjects employed by United States' citizens, though they claimed for a whole season when they were only interfered with on one single day, and though, if the claims were valid, the claimants had a legal remedy in the Courts of the Colony against the perpetrators of the alleged loss and damage, for which the British Government were in no way responsible, yet the British Government, within three years from the date of the claims arising, paid practically the whole sum demanded by the United States' Government, amounting to three-fourths of the claims actually put forward by the claimants.

The Behring Sea claims arise out of the direct action of the United States' Government—action declared by an International Tribunal to be entirely unjustifiable. They are made out, not for profits based on the results of profitable seasons, but on the actual results of the seasons in which they arose. Some of the claimants not only lost their property, but suffered a rigorous imprisonment in a severe climate.

The arrangement made between the two Governments for the payment of a lump sum amounting to little more than half of the claims preferred, without any allowance whatever for interest, cannot be regarded as otherwise than a settlement favourable to the United States, bearing in mind that the claims had already been outstanding for ten years, and that more than a year had elapsed since the decision of the Arbitrators had been given.

It is not easy to believe that if the late Congress had been fully acquainted with the circumstances it would have refused its sanction to so reasonable a proposal, recommended as it was by the Federal Government, or would have declined even an appropriation for the payment of the claims, subject to their examination by a Commission to be appointed for that purpose, or for the simple expenses of such a Commission.

UNITED STATES. No. 1 (1895).

CORRESPONDENCE respecting Claims for Compensation on account of British Vessels seized in Behring Sea by United States' Cruisers.

Presented to both Houses of Parliament by Command of Her Majesty. September 1895.

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